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NEW DELHI, SATURDAY, MAY 2, 1992/VAISHAKHA 12, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह जलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-Section (ii)

(रक्षासंस्थानों को छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांख्यिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the
Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 13 अप्रैल, 1992

का. मा. 1168.—सरकारी स्थान (असाधारण कब्जाधिकारियों की
बेदखली अधिनियम) 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त
शक्तियों का प्रयोग करते हुए, केन्द्र सरकार सहायक निदेशक (प्रशासन)
पूर्वोत्तर सेक्टर, के. रि. ए. बल, शिलांग (मेघालय) को भारत सरकार
के एक राजपत्रित अधिकारी होने के नाते उक्त अधिनियम के प्रयोजनों
के लिए सम्पदा अधिकारी के रूप में नियुक्त करती है और आगे यह निदेश
देती है कि उक्त अधिकारी उक्त अधिनियम के द्वारा स्टोनि हेवन परिसर
शिलांग (मेघालय) में केन्द्रीय रिजर्व पुलिस बल के नियंत्रण या कब्जे
के अधीन सरकारी स्थानों के बारे में सम्पदा अधिकारी को प्रदत्त शक्तियों
का प्रयोग करेगा और उसके लिए दिए गए कर्तव्यों का पालन करेगा।
[स. ए. - II - 10/92-प्रणा. 3/किरिपुबल/गृह मंत्रालय/एफ. पी. - 4]

भार. के. कंवल, उप सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 13th April, 1992

S.O. 1168.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Assistant Director (Administra-

tion) North-Eastern Sector, Central Reserve Police Force, Shillong (Meghalaya), being a gazetted officer of The Government of India, to the Estate Officer for the purposes of the said Act, and further directs that the said Officer shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act in respect of public premises under the control or occupation of the Central Reserve Police Force at Stony Heaven Complex, Shillong (Meghalaya).

[No. A. II-10/92-Admn.-3/CRPF/MHA/FP. IV]

R. K. KANWAL, Dy. Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(वैकिंग प्रभाग)

नई दिल्ली, 13 अप्रैल, 1992

का. मा. 1168.—भारतीय औद्योगिक पुनर्निर्माण बैंक अधिनियम 1984
(1984 का 62) की धारा 10 की उपधारा (1) के खंड (घ) के
उपखंड (iii) के अनुसरण में, केन्द्रीय सरकार, एतद्वारा, श्री जे. बी.
शेहटी, अध्यक्ष और प्रबन्ध निदेशक, केनरा बैंक, बंगलौर को, भारतीय
औद्योगिक पुनर्निर्माण बैंक के निदेशक के रूप में नामित करती है।

[संख्या एक 7/8/92 - बी. ओ. - 1]

एम. एम. सोता रामन, प्रवर सचिव

(2139)

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 13th April, 1992

S.O. 1169.—In pursuance of sub-clause (iii) of clause (d) of sub-section (1) of section 10 of the Industrial Reconstruction Bank of India Act, 1984 (52 of 1984) the Central Government hereby nominates Shri J. V. Shetty, Chairman and Managing Director, Canara Bank, Bangalore as a Director of the Industrial Reconstruction Bank of India.

[No. F. 7/8/92-BO. I]

M. S. SEETHARAMAN, Under Secy.

नई दिल्ली, 13 अप्रैल, 1992

का. आ. 1170 भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खंड (ग) के उपखंड (1) के अनुसरण में केन्द्रीय सरकार एतद्वारा श्री सुरेश कुमार, सचिव, उद्योग मंत्रालय, औद्योगिक विकास विभाग, नई दिल्ली को भारतीय औद्योगिक विकास बैंक का निदेशक नामित करती है।

[सं. एफ-7/7/92 - बी. ओ. 1 (I)]

एम. एस. सीतारामन, अवर सचिव

New Delhi, the 13th April, 1992

S.O. 1170.—In pursuance of sub-clause (i) of clause (c) of sub-section (1) of section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government hereby nominates Shri Suresh Kumar, Secretary, Ministry of Industry, Department of Industrial Development, New Delhi as the Director of the Industrial Development Bank of India.

[No. F. 7/7/92-BO. I(1)]

M. S. SEETHARAMAN, Under Secy.

नई दिल्ली, 13 अप्रैल, 1992

का. आ. 1171 भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खंड (ग) के उपखण्ड (ii) के अनुसरण में, केन्द्रीय सरकार, एतद्वारा श्री टी. पाण्डुरंगा राव, अध्यक्ष और प्रबंध निदेशक, भारतीय औद्योगिक पुनर्निर्माण बैंक, कलकत्ता को, भारतीय औद्योगिक विकास बैंक का निदेशक नामित करती है।

[सं. एफ-7/8/92 - बी. ओ. 1 (ii)]

एम. एस. सीतारामन, अवर सचिव

New Delhi, the 13th April, 1992

S.O. 1171.—In pursuance of sub-clause (ii) of clause (c) of sub-section (1) of section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government hereby nominates Shri T. Panduranga Rao, Chairman and Managing Director, Industrial Reconstruction Bank of India, Calcutta as the Director of the Industrial Development Bank of India.

[F. No. 7/7/92-BO. I(ii)]

M. S. SEETHARAMAN, Under Secy.

नई दिल्ली, 13 अप्रैल, 1992

का. आ. 1172 भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा (1) के खंड (ग) के उपखंड (ii) के अनुसरण में, केन्द्रीय सरकार, एतद्वारा श्री के. पी. नरसिम्हन, अध्यक्ष, भारतीय जीवन बीमा निगम, बम्बई को भारतीय औद्योगिक विकास बैंक का निदेशक नामित करती है।

[सं. एफ-7/7/92 - बी. ओ. 1 (iii)]

एम. एस. सीतारामन, अवर सचिव

New Delhi, the 13th April, 1992

S.O. 1172.—In pursuance of sub-clause (ii) of clause (c) of sub-section (1) of section 6 of the Industrial Development Bank of India Act, 1963 (18 of 1964), the Central Government hereby nominates Shri K. P. Narasimhan, Chairman, Life Insurance Corporation of India, Bombay, as a Director of the Industrial Development Bank of India.

[F. No. 7/7/92-BO. I(iii)]

M. S. SEETHARAMAN, Under Secy.

पेट्रोनियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 मार्च, 1991

का. आ. 1173यतः केन्द्रीय सरकार को यह प्रतीत होता है कि कोण्डित में यह आवश्यक है कि गुजरात राज्य में सी. पी. एफ. मंधार के प्रयोगों तय्यत तक पेट्रोनियम के परिचय के लिए पाइपलाइन तैय नया प्राकृतिक गैस आयोग द्वारा विचार की जाती चाहिए।

और अतः यह प्रतीत होता है कि ऐसी जगहों को विचारों के प्रयोग के लिए एतदुपाय अनुगुची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोनियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रयुक्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अर्जित करने का अर्पण आणव एतद्वारा घोषित किया है।

यह कि उक्त भूमि में श्रिगुड कोई व्यक्ति, उन भूमि के नीचे पाइप लाइन विद्यमान के लिए आता सभन प्राधिकारी, तैय नया प्राकृतिक गैस आयोग, निर्माण और देखभाल प्रभाग, मकरपुरा राड बडौदा - 9 को इस अधिसूचना की तारीख से 21 दिनों के अंतर्गत कर सकेंगे।

और ऐसा आक्षेप करने वाला हर व्यक्ति विनिर्दिष्ट: यह भी कथन करेगा कि क्या यह वह चाहता है कि उसकी गुनवाई व्यक्तिगत रूप से हो या किसी विधि व्यवसायी की मार्फत।

[सं. आ - 11027/149/90 - ओ एन जी - डी iii]

के. विवेकानन्द, डीस्क अधिकारी

अनुसूची

सी. पी. एफ. मंधार से एगोको तय्यत तक पाइपलाइन विद्यमान के लिए राज्य - गुजरात जिन्ना - बम्बई महसुल - पाणरा

गांव	ब्लाक नं०	हेक्टेयर	भार.	सेन्टीशेर
1	2	3	4	5
अरुणामा	359	0	09	80
	360	0	06	80
	375	0	03	95
	376	0	10	85
	377	0	04	78
	383	0	20	85
	384	0	07	85
	385	0	14	91
	386	0	00	29
	441	0	14	35
	443	0	13	97
	442	0	01	14
	435	0	00	97
	436	0	09	87
	437	0	02	86

1	2	3	4	5
	438	0	16	90
	439	0	11	80
	400	0	20	90
	424	0	25	98
	421	0	23	95
	420	0	10	00
	465	0	11	98
	कार्ट ट्रैक	0	03	20
	507	0	00	25
	510	0	16	95
	509	0	16	00
	516	0	11	95
	505	0	17	75
	521	0	04	55
	517	0	09	39
	520	0	31	58
	522	0	01	00

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 15th March, 1991

S.O. 1173.—Whereas it appears to the Central Government that it is necessary in the public interest that for the Transport of petroleum from CPF Gandhar to Apollo Tyres in Gujarat State pipeline should be laid by the Oil and Natural Gas Commission.

And, whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto :

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Mineral Pipeline (Acquisition of Right of User in the land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein ;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil and Natural Gas Commission, Construction and Maintenance Division Makarpura Road, Vadodara—390 009.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal Practitioner.

[No. O-11027/149/90-ONG. D. III]

K. VIVEKANAND, Desk Officer.

SCHEDULE

Pipeline from CPF Gandhar to Apollo Tyres

State : Gujarat District : Bharuch Taluka : Vagra

Village	Block No.	Hec-tare	Are	Cen-tiare
1	2	3	4	5
Argama	359	0	09	80
	360	0	06	80
	375	0	03	95
	376	0	10	85
	377	0	04	78
	383	0	20	85
	384	0	07	85

1	2	3	4	5
	385	0	14	91
	386	0	00	29
	444	0	14	35
	443	0	13	87
	442	0	01	14
	435	0	00	97
	436	0	09	87
	437	0	02	86
	438	0	16	90
	439	0	11	80
	400	0	20	90
	424	0	25	98
	421	0	23	95
	420	0	10	00
	465	0	11	98
	Cart track	0	03	20
	507	0	00	25
	510	0	16	95
	509	0	16	00
	516	0	11	95
	505	0	17	75
	521	0	04	55
	517	0	09	39
	520	0	31	58
	522	0	01	00

नई दिल्ली, 15 मार्च, 1991

का. आ. 1174 यतः केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में यह आवश्यक है कि गुजरात राज्य में के. एन. के. फेस -II तक पेट्रोलियम के परिवहन के लिये पाईपलाइन तेल तथा प्राकृतिक गैस आयोग द्वारा बिछाई जानी चाहिए।

और अतः यह प्रतीत होता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एतदपावद्ध अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अर्जित करने का अपना आशय एतद्वारा घोषित किया है।

बशर्ते कि उक्त भूमि में हितवद्ध कोई व्यक्ति, उस भूमि के नीचे पाइप लाइन बिछाने के लिए आक्षेप सभ्य प्राधिकारी, तेल तथा प्राकृतिक गैस आयोग, निर्माण और देखभाल प्रभाग, मकरपुरा रोड, वडोरा - 9 को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकेगा।

और ऐसा आक्षेप करने वाला हर व्यक्ति विनिर्दिष्टतः यह भी कथन करेगा कि क्या यह वह चाहता है कि उसकी सुनवाई व्यक्तिगत रूप से हो या किसी विधि व्यवसायी की मार्फत।

[सं. 0 - 11027/153/90 - ओ एन जो डी -iii]

के. विवेकानन्द, डेस्क अधिकारी

अनुसूची

के. एन. के. फेस -II के लिए पाईप लाइन बिछाने के लिए राज्य - गुजरात जिला और तालुका - बडौरा

गांव	सर्वे नं.	हेक्टर	आर.	सेन्टोवर
1	2	3	4	5
पाजलपुर	6	0	111	20
	1/बी	0	57	40

New Delhi, the 15th March, 1991

S.O. 1174.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from KNK PHASE II in Gujarat State pipeline should be laid by the Oil and Natural Gas Commission.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto :—

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein ;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil and Natural Gas Commission, Construction & Maintenance Division, Makarpura Road, Vadodra—390 009.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal Practitioner.

[No. O-11027/153/90-ONG. D.III]

K. VIVEKANAND, Desk Officer

SCHEDULE

Pipeline for KNK Phase-II.

State : Gujarat Distt : & Taluka : Vadodara

Village	Survey No.	Hec-tare	Are	Cen-tiare
Fajalpur	6	0	11	20
	1/B	0	57	40

नई दिल्ली, 15 मार्च, 1991

का. घा. 1175.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में यह आवश्यक है कि गुजरात राज्य में के. एन. के. फेस-II तक पेट्रोलियम के परिवहन के लिये पाइपलाइन तेल तथा प्राकृतिक गैस आयोग द्वारा बिछाई जानी चाहिए।

और अतः यह प्रतीत होता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एतदुपाध्य अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार को अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अर्जित करने का अपना आशय एतद्वारा घोषित किया है।

बशर्ते कि उक्त भूमि में हितवन्ध कोई व्यक्ति, उस भूमि के नीचे पाइपलाइन बिछाई के लिए आशेष मक्षम अधिकारी, तेल तथा प्राकृतिक गैस आयोग, निर्माण और देखभाल प्रभाग, मकरपुरा रोड, बड़ोदा-9 को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकेगा।

और ऐसा आक्षेप करने वाला हर व्यक्ति विनिश्चितः यह भी कथन करेगा कि क्या यह वह चाहता है कि उसकी सुनवाई व्यक्तिगत रूप से हो या किसी विधि व्यवसायी की माफ़त।

[मं. ओ-11027/151/90-ओएनजी-डी-III]

के. विवेकानन्द, डेस्क अधिकारी

अनुसूची

के. एन. के. फेस-II के लिए लाईन बिछाने के लिये

राज्य - गुजरात जिला और तालुका - बड़ोदरा

गांव	सर्वे नं.	हेक्टेयर	घार.	सेटीमर
1	2	3	4	5
पदमला	736/2B	0	54	80

New Delhi, the 15th March, 1991

S.O. 1175.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from KNK PHASE II in Gujarat State pipeline should be laid by the Oil and Natural Gas Commission.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquire that right of user in the land described in the schedule annexed hereto.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein ;

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil and Natural Gas Commission, Construction & Maintenance Division, Makarpura Road, Vadodra—390 009.

And every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal Practitioner.

[No. O-11027/151/90-ONG. D. III]

K. VIVEKANAND, Desk Officer

SCHEDULE

Pipeline for KNK Phase-II

State : Gujarat Distt & Taluka : Vadodara

Village	Survey No.	Hec-tare	Are	Cen-tiare
Padamala	736/2B	0	54	80

नई दिल्ली, 22 मार्च, 1991

का. घा. 1176.—यतः पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम और प्राकृतिक गैस संभालय की अधिसूचना का. घा. मं. 800 तारीख 27-2-90 द्वारा केन्द्रीय सरकार ने उक्त अधिसूचना से संलग्न अनुसूची में विनिश्चित भूमि में उपयोग के अधिकार को पाइपलाइनों को बिछाने के लिए अर्जित करने का अपना आशय घोषित कर दिया था।

और यतः सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को रिपोर्ट दे दी है।

और आगे यतः केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से संलग्न अनुसूची में विनिश्चित भूमि में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अतः अब उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रवृत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा घोषित करती है कि इस अधिसूचना में संलग्न अनुसूची में विनिश्चित उक्त भूमियों में उपयोग का अधिकार पाइपलाइन बिछाने के प्रयोजन के लिए एतद्वारा अर्जित किया जाता है।

और आगे उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निर्देश देती है कि उक्त भूमियों में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय तेल और प्राकृतिक गैस आयोग में सभी बाधाओं से मुक्त रूप से, घोषणा के प्रकाशन की इस तारीख को निहित होगा।

[सं. अं० 11027/2/90/ओ. एन. जी. डी - III]

के. विवेकानन्द, डैस्क अधिकारी

अनुसूची

सी. टी. एफ. काल से जी. जी. एम. XI तक पादप लाइन बिछाने के लिए।

राज्य - गुजरात	जिला - मेहसाणा	तालुका - कानोद		
गांव	ब्लाक नं.	हेक्टेयर	आर.	सेण्टीयर
1	2	3	4	5
सेरथा	1802	0	06	80
	1800	0	05	70
	1799	0	16	60
	1798	0	11	60
	1797	0	00	10
	1795	0	02	96
	1994	0	03	91
	1793	0	11	20
	1792	0	05	20
	1791	0	04	50
	1773	0	09	00
	1784	0	09	50
	1783	0	08	20
	1782	0	04	80
	1779	0	05	50
	1778	0	06	40
	1697/ए	0	00	25
	1698/ए	0	03	36
	1699	0	24	60
	1700	0	01	15
	1220	0	18	05
	कार्ट ट्रैक	0	01	80
	1425	0	08	80
	1424	0	02	70
	1423	0	04	00
	1422	0	04	50
	1421	0	10	50
	1420	0	01	70
	1396	0	07	80
	1397	0	00	10
	1398	0	05	60
	1399	0	07	20
	1400	0	01	95
	1401	0	02	28
	1402	0	03	32
	1389	0	02	45
	1388	0	19	20
	1387	0	00	60
	1386	0	14	80
	1220	0	80	20

1	2	3	4	5
	1219/ए	0	08	50
	1219/बी	0	01	80
	1212	0	19	40
	1187	0	12	80
	कार्ट ट्रैक	0	00	96
	1188	0	19	50
	कार्ट ट्रैक	0	01	00
	1163	0	13	20
	1165	0	01	20
	1164	0	11	00
	1157	0	00	10
	1158	0	08	50
	1156	0	01	30
	1155	0	05	05
	1154	0	11	50
	कार्ट ट्रैक	0	01	00
	1048	0	06	20
	1050	0	07	12
	1051	0	10	28
	कार्ट ट्रैक	0	00	60
	1053	0	14	40
	कार्ट ट्रैक	0	01	80
	1021	0	07	00
	1020	0	13	40
	1003	0	11	60
	1002	0	12	40
	998	0	11	60
	994	0	12	00
	996	0	09	00
	992	0	02	80
	966	0	13	80
	963	0	12	60
	962	0	07	80
	958	0	10	40
	960	0	03	30
	959	0	02	80
	952	0	14	80
	948	0	17	80
	946	0	11	40
	944	0	12	80
	929	0	08	60
	930	0	10	00
	931	0	19	80
	कार्ट ट्रैक	0	01	00

New Delhi, the 22nd March, 1991

S.O. 1176.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas S.O. No. 800 dated 27-2-1990 under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the right of user in lands specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section (1) of the Section 6 of the said Act, submitted report to the Government;

And further whereas the Central Government has, after considering the said report decided to acquire the right of user in the lands in the Schedule appended to this notification;

Now therefore, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act the Central Government hereby declares that the right of user in the said land specified in the schedule appended to this notification hereby acquired for laying the pipeline ;

And further in exercise of powers conferred by sub-section (4) of the section, the Central Government directs that the right of user in the said lands shall instead of vesting in Central Government vests on this date of the publication of this declaration in the Oil & Natural Gas Commission free from encumbrances.

[No. O-11027/2/90-ONG.D.-III]

K. VIVEKANAND, Desk Officer.

SCHEDULE

Pipeline from CTF Kalol to GGS XI.

State : Gujarat District : Mehsana Taluka : Kalol

Village	Block No.	Hec-tare	Are	Centiare
1	2	3	4	5
Sertha	1802	0	06	80
	1800	0	05	70
	1799	0	16	60
	1798	0	11	60
	1797	0	00	10
	1795	0	02	96
	1794	0	03	91
	1793	0	11	20
	1792	0	05	20
	1791	0	04	50
	1773	0	09	00
	1784	0	09	50
	1783	0	08	20
	1782	0	04	80
	1779	0	05	50
	1778	0	06	40
	1697/A	0	00	25
	1698/A	0	03	36
	1699	0	24	60
	1700	0	01	15
	1220	0	18	05
	Cart track	0	01	80
	1425	0	08	80
	1424	0	02	70
	1423	0	04	00
	1422	0	04	50
	1421	0	10	50
	1420	0	01	70
	1396	0	07	80
	1397	0	00	10
	1398	0	05	60
	1399	0	07	20
	1400	0	01	95
	1401	0	02	28
	1402	0	03	32
	1389	0	02	45
	1388	0	19	20
	1387	0	00	60
	1386	0	14	80
	1220	0	80	20
	1219/A	0	08	50
	1219/B	0	01	80
	1212	0	19	40
	1187	0	12	80
	Cart track	0	00	96
	1188	0	19	50
	Cart track	0	01	00

1	2	3	4	5
	1163	0	13	20
	1165	0	01	20
	1164	0	11	00
	1157	0	00	10
	1158	0	08	50
	1156	0	01	30
	1155	0	05	05
	1154	0	11	50
	Cart track	0	01	00
	1048	0	06	20
	1050	0	07	12
	1051	0	10	28
	Cart track	0	00	60
	1053	0	14	40
		0	01	80
	1021	0	07	00
	1020	0	13	40
	1003	0	11	60
	1002	0	12	40
	998	0	11	60
	994	0	12	00
	996	0	09	00
	992	0	02	80
	966	0	13	80
	963	0	12	60
	962	0	07	80
	958	0	10	40
	960	0	03	30
	959	0	02	80
	952	0	14	80
	948	0	17	80
	946	0	11	40
	944	0	12	80
	929	0	08	50
	930	0	10	00
	931	0	19	80
	Cart track	0	01	00

नई दिल्ली, 22 मार्च, 1992

का. प्रा. 1177—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि लोक-हित में यह आवश्यक है कि गुजरात राज्य में कूप नं. 25 से कूप नं. 5 तक पेट्रोलियम के परिवहन के लिए पाइपलाइन तेल तथा प्राकृतिक गैस आयोग द्वारा बिछाई जानी चाहिए।

और अतः यह प्रतीत होता है कि ऐसी लाइनों को बिछाने के प्रयोजन के लिए एतदुपाय अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अर्जित करने का अपना आशय एतद्वारा घोषित किया है।

यद्यपि कि उक्त भूमि में हितबद्ध कोई व्यक्ति; उस भूमि के नीचे पाइपलाइन बिछाने के लिए आक्षेप समझ प्राधिकारी तेल तथा प्राकृतिक गैस आयोग, निर्माण और देखभाल प्रभाग, मकरपुरा रोड, बडोदा - 9 को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकेगा।

और ऐसा आक्षेप करने वाला हर व्यक्ति विनिर्दिष्ट: यह भी कथन करेगा कि क्या वह यह चाहता है कि उसकी सूतबाई व्यक्तिगत रूप से हो या किसी विधि व्यवसायी की मार्फत।

[सं. ओ. - 11027/5/9/ओ. एन. जी. डा-(III)]
के. विवेकानन्द, डेस्क अधिकारी

अनुसूची				
कूप नं. 25 से कूप नं. 5 तक पाइप लाइन बिछाने के लिए :-				
राज्य - गुजरात जिला - बड़ोदरा तालुका - पादरा				
गांव	सर्वे नं.	हेक्टेयर	आर.	सेन्टीयर
1	2	3	4	5
गवासद	245	0	30	75
	246	0	09	60
	247	0	00	70
	236	0	07	50
	249	0	15	45
	261	0	09	90
	कार्ट ट्रैक	0	00	60
	268	0	15	15
	257	0	00	50
	269	0	00	50
	271	0	12	00
	270	0	08	10
	278	0	08	40
	277	0	09	90
	279	0	00	40
	276	0	06	75
	कार्ट ट्रैक	0	02	25

New Delhi, the 22nd March, 1991

S.O. 1177.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of the petroleum from Well No. 25 to Well No. 5 in Gujarat State pipeline should laid by the Oil & Natural Gas Commission.

And whereas it appears that for the purpose of laying such pipeline, it is necessary to acquired that right of user in the land described in the schedule annexed hereto :—

Now, therefore, in exercise of the powers conferred by sub-section (1) of the section 3 of the petroleum and Minerals pipelines (Acquisition of Right of User in the land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Provided that any person interested in the said land may, within 21 days from the date of this notification, object to the laying of the pipeline under the land to the Competent Authority, Oil and Natural Gas Commission, Construction and Maintenance Division, Makarpura Road, Vadodara-390 009.

And every person making such an objection shall also state specifically whether he wishes to be hear in person or by legal Practitioner.

[No. O-11027/5/91-ONG.D-III]

K. VIVEKANAND, Desk Officer.

SCHEDULE

Pipe line from well no. 25 to well no. 5

State : Gujarat District : Vadodara Taluka : Padara

Village	Survey No.	Hec-tare	Are	Centiare
1	2	3	4	5
Gavasad	245	0	30	75
	246	0	09	60

1	2	3	4	5
	247	0	00	70
	236	0	07	50
	249	0	15	45
	261	0	09	90
	Cart track	0	00	60
	268	0	15	15
	257	0	00	50
	259	0	00	50
	271	0	12	00
	270	0	08	10
	278	0	08	40
	277	0	09	90
	279	0	00	40
	276	0	06	75
	Cart track	0	02	25

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 17 मार्च, 1992

का.आ. 1178.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अनुसूची में, "दिल्ली विश्वविद्यालय" शेषक के अधीन, विद्यमान प्रविष्टियों के पश्चात् निम्नलिखित जोड़ा जाएगा, अर्थात् :—

मास्टर आफ सर्जरी (तंत्रिका शल्य विज्ञान) एम सी एच (तंत्रिका शल्य विज्ञान)

"यह अर्हता मान्यता प्राप्त आयुर्विज्ञान अर्हता तभी होगी जब वह गोविन्द वल्लभ पंत अस्पताल, नई दिल्ली में प्रशिक्षित होने वाले छात्रों के संबंध में दिल्ली विश्वविद्यालय द्वारा जुलाई, 1987 से प्रदान की गई हो।"

[संख्या बी 11015/7/92-एम ई (यू जी)]

आर. विजयकुमारी, डेस्क अधिकारी

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 17th March, 1992

S.O. 1178.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule, under the heading "University of Delhi", after the existing entries, the following shall be added, namely :—

"M. Ch. (Neuro Surgery) : M. Ch. (Neuro Surg.)

This qualification shall be recognised medical qualification when granted by University of Delhi from July, 1987 in respect of the students being trained at G. B. Pant Hospital, New Delhi."

[No. V-11015/7/92-ME (U)]

R. VIJAYAKUMARI, Desk Officer.

जल भूतल परिवहन मंत्रालय

नई दिल्ली, 7 अप्रैल, 1992

का.आ. 1179.—केन्द्र सरकार समय-समय पर यथा संशोधित राष्ट्रीय नाविक कल्याण बोर्ड नियमावली, 1963 के नियम-3 और 4 के साथ पठित वाणिज्यिक नौवहन अधिनियम, 1958 (1958 का 44)

की धारा 218 की उप धारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करने हुए एम्प्लोयर्स नाविकों और जहाज मालिकों के निम्नलिखित प्रतिनिधियों की इस मन्त्रालय की दिनांक 10 अप्रैल, 1991 की समसंयुक्त अधिसूचना [का. आ. 851(घ)] के सहित गठित बोर्ड में सदस्य के रूप में नामांकित करती है :—

1. श्री साधन कांजी लाल 14/1 एफ, वाटगुंज स्ट्रीट, कलकत्ता-700032	नाविकों के प्रतिनिधि (एफ. एस. यू. आई., कलकत्ता)
2. कैप्टन एम. एम्. कोरेरा, महाप्रबन्धक, भारतीय नौवहन नियम, 245, मैडम कामा रोड, बम्बई।	जहाज मालिकों के प्रतिनिधि (आई. एन. एस. ए., बम्बई)

[सं. एन. टी./15012/3/90-एम. टी.]

के. पद्मानभाचार, अवर सचिव

MINISTRY OF SURFACE TRANSPORT (SHIPPING WING)

New Delhi, the 7th April, 1992.

S.O. 1179.—In exercise of the powers conferred by sub-section (1) of section 218 of the Merchant Shipping Act, 1958, (44 of 1958), read with rules 3 and 4 of the National Welfare Board for Seafarers Rules, 1963 as amended from time to time, the Central Government hereby nominates the following representatives of Seafarers and Ship owners on the Board constituted vide this Ministry's Notification of even number dated 10th April, 1991 [S.O. 851(E)], as members :—

1. Shri Sadhan Kanjilal
14/1F, Watgunj Street,
Calcutta-700023.
Seafarers' Representative
(FSUI, Calcutta)
2. Capt. M. X. Corera,
General Manager,
Shipping Corporation of India,
245, Madame Cama Road,
Bombay.
Ship Owners' Representative
(INSA, Bombay).

[No. ST-15012/3/90 MT.]

K. PADMANABHACHAR, Under Secy.

अम मन्त्रालय

नई दिल्ली, 3 अप्रैल, 1992

का. आ. 1.80.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दोर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकांश व थम न्यायालय, कानपुर के पंचवट की प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-92 को प्राप्त हुआ था।

[संख्या एन-12012/65/88-डी-II (ए)]

सुभाष चन्द्र शर्मा, डेप्ट अफिसरी

MINISTRY OF LABOUR

New Delhi, the 3rd April, 1992

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers

in relation to the management of State Bank of Indore and their workmen which was received by the Central Government on 3-4-92.

[No. L-12012/65/88-D.II(A)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE SRI ARIAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 116 of 1988

In the matter of dispute between :

Sri V. N. Sekhari, Authorised Representative 26/104,
Birhana Road, Kanpur.

AND

The Manager, State Bank of Indore, Lucknow.

AWARD

1. The Central Government, Ministry of Labour vide its notification no. L-12012/65/88-D.II(A) dated 21st September, 1988, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of State Bank of Indore in terminating the services of S/Sri Nir-moy Mitra, Rajveer Singh, Manoj Sharma, Sanjay Sharma, Pradeep Sharma, M. C. Pachauri, Ratan Lal Vijay Kumar Dixit, Raj Narain Sharma, Raj Narain Singh and Randhir Singh and not considering them for further employment while recruiting fresh hands under section 25H of the I.D. Act, is justified? If not, to what relief the workmen concerned are entitled?

2. There are 11 workmen in the present case, 3 of them namely, S/Sri Rajveer Singh, Raj Narain Sharma and Randhir Singh have not come forward to press their claims. The remaining 7 workmen have filed claim statement raising almost similar pleas. Their particulars such as post held by them, branches in which they worked, period for which they worked etc., as given in their claim statements are shown in Annexure-A to this Award.

3. The case of these 8 workmen in brief is that with a view to avoid appointment of permanent hands, the management started. The practice of appointing employees on temporary basis for doing the duties of regular nature so that they could not earn the benefits of modified Sastry Award, including the question of their regularisation in service. In pursuance of the said policy and bank's head office instructions appointment used to be made for periods not exceeding 75 days. They discharged the duties of permanent nature similar to that of regular staff. There was no justification for termination of their services when the bank opened new branches and recruited staff after the termination of their services. They allege that they were not the junior most when their services were terminated. Even after the termination of their services fresh hands were employed by the bank without affording any opportunity of reemployment to them. They were not paid any compensation nor were given any notice nor paid wages in lieu of notice. Bank thus violated the provisions of Articles 14, 16 and 21 of the Constitution of India, Sec. 25G, 25H I.D. Act, Rules 77 and 78 of I.D. (Central) Rules, 1957 and breach of paras 493, 516, 522 and 524 of the modified Sastry Award. They have therefore, prayed that after declaring the action of the management of the bank as illegal and unjustified, the management be directed to reinstate them with retrospective effect with full back wages and all consequential benefits.

4. With regard to the 3 workmen, namely S/Sri Rajveer Singh, Raj Narain Sharma, Randhir Singh it was ordered on 14-4-89, that a no claim award would be given against them while passing the final award in the case.

5. The case is contested by the management of the bank. The management admit the period of working of all the 8 workmen named in Annexure A of this award except the

period of working of two workmen, namely S/Sri Manoj Sharma and Pradeep Sharma. According to the management Sri Manoj Sharma had worked for 75 days from 14-8-84 to 27-10-84 and Sri Pradeep Sharma had worked from 7-10-85 to 20-12-85.

6. The management plead that the appointment having been made for fixed term, by virtue of provisions of section 2(oo)(bb) I.D. Act, the case of renewal of contract of services cannot be agitated before this Tribunal. The management deny that with a view to deprive workmen of the benefits of the modified Shastri Award and of regularisation in service they were being appointed temporary for a period not exceeding 75 days. Temporary appointments were being made to cope with emergent need of the bank within the meaning of Sastry Award and Desai Award. The management further plead that the concept of seniority and juniority is only applicable in the case of regular employees of the bank. The management bank deny having committed violation of any article of the Constitution, any section of I.D. Act and Rules framed thereunder and any breach of any of the paras of Sastry Award referred to in the claim statements of these workmen.

7. In support of their case, the contesting workmen have examined S/Sri M. C. Pachauri and Nirmoy Mitra. The workmen have also filed a number of documents with the list dated 22-1-90 but they were nothing but copies of petitions made under Sec. 2(A) of the Act to ALCS(C) and the FOCs sent by ALCS(C). No evidence has been led by the management in the case. In fact on 4-2-92 when the date was being fixed after closing evidence of the workmen, it was submitted by Sri S. N. Sharma, the authorised representative for the management that the management was not to lead any evidence in defence. On 4-2-92 it was also submitted by Sri K. N. Soni, the authorised representative for the workmen, that in case other workman turned up on the next date fixed for arguments, he be permitted to examine him. It was in these circumstances that on 22-3-92 Sri D. D. Mehta, who filed his authority on behalf of the workmen was allowed to examine Sri Nirmoy Mitra workman.

8. On 20-3-92, after the close of evidence of the parties, arguments were heard and the case was reserved for giving award. On the oral submission of Sri Mehta he was allowed two days time to cite rulings in support of the case of the workmen. Instead on 23-3-92 he moved an application alongwith the photostat copy of application said to have been sent by registered post by Sri Nirmoy Mitra to the Tribunal for an opportunity to him to prepare the arguments. The application was rejected by a detailed order running almost in three typed pages. Still in the interest of justice I gave time to Sri Mehta to place rulings before me by 25-3-92. Even this opportunity was not utilised by Sri Mehta.

9. From the admitted facts it is clear that most of the workman had worked for 75 days and one for 69 days. About one or two workmen there is a dispute as to whether they had worked for 75 days or 76 days. The difference is insignificant and is of no consequence for the purpose of deciding the case.

10. The question is whether section 25F I.D. Act the breach of which has been alleged by the workmen applies to the fact of the present case. Although no specific mention of section 25F I.D. Act has been made it has been alleged in the claim statement that no notice or notice pay and/or any compensation was given to workmen before the termination of their services. In the case of none of the workman section 25F applies because none of them had worked

continuously for one year within the meaning of section 25F of I.D. Act. The period of one year within the meaning of sec. 25B for the purpose of application of sec. 25B, 25F means working for 240 days or more within a period of 12 months preceding the date of termination of services.

11. From the side of workmen violation of Rules 77 and 78 of the I. D. (Central) Rules, 1957, has also been alleged. These Rules when read with Rule 76 will show that they are applicable only to the case of a workman who has rendered not less than one year continuous service within the meaning of section 25B of the Act before termination of his services. Hence the violation of these two Rules is also not proved. Rules 77 and 78 are to be read with section 25G and 25H of the I.D. Act. When they are read together it will be found that these two sections have no application to the facts of the present case. In their claim statement the workmen have not named the persons who were junior to them at the time of termination of their services. They have also not named persons who were recruited after the termination of their services. So in any case violation of these two sections is not established.

12. The workmen have then alleged breach of paras 493, 516, 522 and 524 of the Modified Sastry Award. They are not material so far as the facts of this case are concerned as there is almost no dispute between the parties about the period of working of the workmen.

13. Another plea raised by the workmen is that the management adopted an unfair labour practice by making appointment of temporary employees for periods not exceeding 75 days. They have not named the person in their pleading nor in their petitions before ALCS(C) who were so appointed by the management prior to their appointment. So I find no force even in this contention.

14. Here I would like to refer to section 2(oo) (bb) I.D. Act. According to it, the termination of a workman as a result of non renewal of contract of employment between the employer and the workman on its expiry of such contract being terminated under stipulation in that behalf contained therein would not amount to retrenchment. This clause was introduced by means of Act No. 49 of 1984 w.e.f. 18-8-84. It is the specific case of the workmen that under the instructions appointments used to be made for fixed periods of 75 days.

15. In his cross examination Sri M. C. Pachauri workman has deposed that his appointment was for a fixed term. Similarly Sri Nirmoy Mitra has deposed in his cross examination that he was issued three appointment letters for fixed periods. The cases of Sri Nirmoy Mitra, Manoj Sharma, Pradeep Sharma and Vijay Kumar Dixit squarely falls within the ambit of the said provisions. So their cases cannot be said to be one of retrenchment under section 2(oo) of the I.D. Act.

16. 9 Thus from all that has been said above I find no force in the cases of any of the contesting workmen. Hence it is held that the action of the management of the State Bank of Indore in terminating the services of 8 contesting workmen cannot be held as unjustified and illegal. It is also held that the action of the management in not considering them for further re-employment under sec. 25H of I.D. Act cannot be held as unjustified and illegal. As against the remaining three workmen namely, S/Sri Rajveer Singh, Raj Narain Sharma and Randhir Singh, a no claim award is passed against them. Consequently they are not entitled to any relief.

17 Reference is answered accordingly.

ARIJAN DEV, Presiding Officer

ANNEXURE—A

S. No.	Name of workman	Post on which worked	Period of working	Number of working days	Date of termination	Branch where the workman worked
1	2	3	4	5	6	7
1.	Nirmoy Mitra	Clerk	2-9-86 to 14-11-86	74	15-11-86	Aminabad, Lucknow
2.	Manoj Sharma	Peon-cum-Farash	14-8-84 to 28-10-84	76	29-10-84	Agra
3.	Rajveer Singh	—	Claim not filed	—	—	—
4.	Sanjay Sharma	Peon	10-10-83 to 17-12-83	69	18-12-83	Agra
5.	Pradeep Sharma	Peon-cum-Farash	7-10-85 to 21-12-85	75	22-12-85	Agra
6.	M.C. Pachori	Clerk-cum-Cashier	26-3-84 to 8-6-84	75	9-6-84	Agra
7.	Rattan Lal	Peon-cum-Farash	3-3-83 to 16-5-83	75	17-5-83	Hospital Rd, Agra
8.	Vijay Kumar Dixit	Peon-cum-Farash	14-2-85 to 29-4-85	75	30-4-85	Agra
9.	Raj Narain Sharma	—	Claim not filed	—	—	—
10.	Raj Narain Singh	Peon	17-5-83 to 30-7-83	75	31-7-83	Agra
11.	Randhir Singh	—	Claim not filed	—	—	—

नई दिल्ली, 6 अप्रैल, 1992

का.प्रा. 1181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार छत्रसाल ग्रामीण बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण व श्रम न्यायालय, कानपुर को पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-4-92 को प्राप्त हुआ था।

[संख्या एल-12011/83/89-आई थार (बी-1)]
सुभाष चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 6th April, 1992

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chhatrasal Gramin Bank and their workmen, which was received by the Central Government on 6-4-92.

[No. L-12011/83/89 IR(B-I)]
S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR

INDUSTRIAL DISPUTE NO. 68 OF 1990

In the matter of dispute between —

Sri Mohan Lal,
C/o Sri V. N. Sekhari,
26/104 Birhana Road,
Kanpur.

AND

The Chairman,
Chhatrasal Gramin Bank,
Head Office,
Orai-285001.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12011/83/89-IR(B)-1 dt. 22-1-90 has referred the following dispute for adjudication to this Tribunal:—

"Whether the action of the management of Chhatrasal Gramin Bank, Orai in terminating the services of Sri Mohan Lal Ex-sub staff w.e.f. 23-6-85 in violation of sections 25-F G and H of the I.D. Act, 1947 is justified? If not to what relief the workman concerned is entitled?"

2. On 6-3-92, the parties moved a settlement in the above case with the request that the case be decided in terms of the settlement. The settlement was signed on 6-3-92. The terms of the settlement is as under:—

(1) It is agreed that the workman concerned Sri Mohan Lal will be absorbed afresh with prospective date hereafter in the permanent cadre of part time messenger in Chhatrasal Gramin Bank as per Bank's Rules and Regulations.

(2) It is further agreed that the workman concerned, said Sri Mohan Lal voluntarily relinquishes his claim of back wages/allowances and the benefits whatsoever of his past temporary services in the Chhatrasal Gramin Bank and as such Sri Mohan Lal will never claim the same in future.

(3) It is further agreed that the workman concerned Sri Mohan Lal will be absorbed as aforesaid within 10 days of the settlement.

(4) Thus this fully and finally resolves the entire matter of dispute under reference.

"In view of the above terms of settlement it comes out that there remains no dispute between the parties. Therefore the reference is decided in terms of the above settlement.

Sd/

ARJAN DEV, Presiding Officer

नई दिल्ली, 8 अप्रैल, 1992

का.प्रा. 1182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थ मालाबार ग्रामीण बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में श्रम न्यायालय, तिरुवाकुलम को पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-4-92 को प्राप्त हुआ था।

[संख्या एल-12012/18/88-डी I (बी)/डी-III (ए)]

सुभाष चन्द्र शर्मा, डेस्क अधिकारी

New Delhi, the 8th April, 1992

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of North Malabar Gramcen Bank and their workmen, which was received by the Central Government on 8-4-92.

[No. L-12012/18/88-DI(B)/DIII(A)]

S. C. SHARMA, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM

(Labour Court, Ernakulam)

(Tuesday, the 31st day of March, 1992)

PRESENT :

Shri R. Ravendran, B.A., B.L., Presiding Officer.
Industrial Dispute No. 7 of 1989 (C)

BETWEEN

The Chairman, North Malabar Bank, P.B. No. 59,
Fort Road, Cannanore-1 (Kerala).

AND

The General Secretary, Cannanore District Bank Jewel
Appraisers Association, "USHUS", Murayalhode,
P.O. Ariyil, Puttuvan, Cannanore, Kerala.

Representations:—

M/s. M. P. R. Nair, Advocate, Cochin-35.—For
Management.

M/s. M. V. Joseph & A. V. Xavier, Advocates, Iyyattil
Road, Cochin-11—For Union.

AWARD

"Whether the action of the management of North Malabar Gramcen Bank, Head Office-Cannanore, in dispensing with the services of Shri P. K. Narayana Achary, Jewel Appraiser of Payyavoor Branch of North Malabar Gramcen Bank w.e.f. 7-4-1984 is justified and legal? If not to what relief the workman is entitled to?" is the issue referred for adjudication to this court as per the order No. L-12012(18)/88-DI(B)/DIII (A) dated 9th March 1989.

2. The Union has filed claim statement stating as follows:—

The workman had been a Jewel Appraiser in the Payyavoor Branch of the management bank since 17-10-77. At the time of his appointment the workman executed a security bond for Rs. 500 and deposited in the bank that much amount. The payment to the workman was based on certain percentage of the amount of gold loan, which varied from time to time. On an average the payment was Rs. 350 per month. There was no room for any complaint from the conduct of the workman. But his services was abruptly terminated by the management without assigning any reason. There was no notice or notice pay in lieu of notice while his service was terminated. The action of the management is illegal and against the principles of law and natural justice. The workman is aged 46 and not in a position to find an alternate employment at this advanced age. Ever since the termination of service he has been unemployed and struggling hard for his livelihood. He has to maintain a family consisting of his wife and 5 children who are all studying. All his assets consists in 13 cents of land and a small residential building therein. So after the termination of service the workman and his family are put to much hardship and financial difficulties. After terminating the service of the workman, another appraiser by name V. S. Gajagopala Achary was appointed. He is still continuing in service. There is no justification in dispensing with the service of the workman. So he is entitled to be reinstated in service with backwages, continuity of service and other attendant benefits.

3. The management has filed reply statement contending as follows:—

Jewel Appraisers are not employees of the bank and hence the claimant is not a workman as defined in the Industrial Disputes Act. They are independent professionals. The services of the Jewel Appraisers are limited and their role is to ascertain and certify the purity of jewels pledged by the customers in connection with availing of loans on the security of Jewels. The claimant was the consulting Jewel Appraiser of Payyavoor Branch. The management required the services of the claimant as and when required. After December, 1982 the management never consulted the claimant to ascertain the quality of the Jewels pledged by the Bank's customers. Jewel Appraisers, are not under the supervision and control of the management and no salary or wages is being paid to them by the management. The fee payable to them was borne by the concerned customers and the management collects the fee of the Jewel Appraisers only with a view to protect customers from exploitation by the Jewel Appraisers. He was not confined to the works of our branch but was also free to attend any other works of his choice. Moreover, the jewel appraisers do not attend the bank as regular employees do. They do not apply for leave, nor adhere to any strict schedule of attendance at the bank. The management has the right to consult any person of its choice for the purpose of appraisal of the Jewels. The management has never appointed the claimant as an employee. No appointment order was given to him by the management. The workman is a gold-smith of Payyavoor doing independent private business. He was conducting the said business even prior to the commencement of the consultation work with the bank. The conduct of the workman was also not satisfactory and Management bank has been receiving repeated complaints from the public. One such complaint was received on 30-10-82, from one Mrs. K. P. Devaki, stating that the gold ornaments which were entrusted to the workman for certifying the purity has not been returned to her even after expiry of one year. The workman is not entitled to get any relief in this reference.

4. The Union has filed reply statement reiterating his claims in the claim statement and refuting the contentions in the written statement.

5. The point arising for consideration is whether the action of the management in dispensing with the service of the workman is justified and legal. If not to what relief the workman is entitled?

6. For the workman WW1 was examined and Exts. W1 and W2 were marked. For the management MW1 was examined and Exts. M1 to M3 were marked.

7. According to the workman he was employed as Jewel Appraiser in the management bank from 17-10-77. At the time of his appointment the workman executed a security bond for Rs. 500 and deposited in the bank that much amount. He was paid on the basis on certain percentage of the amount of gold loan, which varied from time to time. On an average the payment was Rs. 350 per month. While so his service was terminated by the management without assigning any reason. Therefore the termination is to be found as illegal, and he is to be reinstated in service with backwages and continuity of service and all other attendant benefits. The management would contend that the Jewel Appraiser is not a workman in the management bank. He is an independent professional. He was engaged as and when his service was required for certifying the purity of Jewels. Therefore the first question to be considered is whether the Jewel Appraiser is a workman as defined in the I.D. Act. The Secretary of the Union was examined as WW1 who would depose that the workman was employed as a Jewel Appraiser from 17-10-77 and he was paid wages on piece rate basis his service was terminating without assigning any reason. He would further depose in the cross examination that he used to go to the bank punctually and he was in the bank during the working hours of the bank for doing the work of appraising the Jewel. The Inspecting officer in the management bank was examined as MW1 who would depose that the workman was engaged as and when his service was required and he was not a permanent staff and no duty time was prescribed for him. He need not apply for leave for his absence in the bank. It is come out in evi-

dence that the workman was employed by the management as a Jewel Appraiser who was testifying the purity of the jewels and he was paid wages on the basis of the percentage of loan amount fixed for the purpose. This amount was collected from the customers by the management and then the management would pay to the appraiser. It is also come out in evidence that there is no specific time prescribed as working hours for the appraiser. The learned counsel for the management would argue that the management has no control and supervision over the Jewel appraisers. But the learned counsel for the union would argue that the right to control the manner of work is not the exclusive test for determining the relationship of employer and employee but facts like tools or machine being provided by management the right of rejection of the end-produce if it does not conform to the instructions the element of control and supervision would also be relevant factors. The fact that concerned employee takes a work elsewhere and that he is not obliged to work for the whole day do not militate against himself being treated as a workman in the place where he attends for work. It is also come out in evidence that the appraisers are expected to be present during working hours and they are bound to be present throughout. The remained between 10 a.m. and 12.30 p.m. Appraisers fee collected from customers are paid to them. It is also come out in evidence that the management bank is advancing loan on jewels and each branch had appraiser and it is one of the major business of the bank also. It is also come out in evidence that after the termination of the service of the workman another appraiser was engaged for certifying the purity of gold. Indian Bank, Madras v. Workmen represented by Secretary, Indian Bank Appraisers Association reported FLR 1987 (164) it is held that the appraisers are the workmen as defined in the I.D. Act. In view of this decision and in view of the fact that the appraisers in this case was doing the work or certifying the purity of gold in the management bank from 1977 onwards and he is expected to be present during working hours and he is bound to be present throughout and he was paid wages by the management after collecting some prescribed amount from the customers for certifying the purity and quality of the gold which the customers wanted to pledge in the bank for getting loan and advancing loan on jewel is one of the major businesses of the bank, service of the appraiser is indispensable for the bank and he is doing the skilled work of certifying the purity and quality of the gold for reward. I find that the employee is also workman as defined in the I.D. Act. Hence I find that the employee Narayana Achary is a workman as defined in the Industrial Disputes Act. It can be seen that his services were terminated without assigning any reason. No notice or notice pay or retrenchment compensation is paid to him. It is also come out in evidence he has continuous service of 240 days a year so that he is entitled to get the right of employment under the management bank and his termination without assigning any reason is a violation of the section 25(f) of the I.D. Act. Therefore, I find that termination of his service is illegal and he is entitled to get reinstatement in service with continuity of service and other benefits. It is made clear that his backwages should be calculated on the basis of the average wages paid to him preceding one year from the date of his termination.

8. In the result an award is passed directing the management to reinstate him in service with full back wages and continuity of service and other benefits.

Ernakulam, R. RAVFENDRAN, Presiding Officer
31-3-1992.

Appendix

Witness examined on the side of the Management:

MW1. Sri. C. P. Antony.

Witness examined on the side of workman:—

WW1. Sri. P. K. K. Athivadam.

Exhibits marked on the side of Management:

Ext. M1. Bond executed by the workman.

Ext. M2. Extract of account maintained in the bank in the name of workman.

Ext. M3. Complaint dated 30-10-82 submitted to the Manager by Smt. K. P. Devaki.

Exhibits marked on the side of workman

Ext. W1. Termination order dated 7-4-84 issued to the workman.

Ext. W2. Minutes of conciliation proceedings before the ALC (C), Ernakulam on 16-9-87.

Presiding Officer.

नई दिल्ली, 7 अप्रैल, 1992

का.आ. 1183.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट मास्टर, हेड पोस्ट ऑफिस चौक, लखनऊ के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारियों के बीच, प्रत्यक्ष में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकांश, कानपुर के पंचपट का प्रस्तावित करती है, जो केन्द्रीय सरकार को 6-4-92 को प्राप्त हुआ था।

[संख्या एन-40012/1/89-डी-2(बी) (Ph.)

केंद्रीय औद्योगिक उपाय, डेस्क अधिकारी

New Delhi, the 7th April, 1992

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Post Master, Head Post Office Chowk, Lucknow and their workmen, which was received by the Central Government on 6-4-92.

[No. L-40012/1/89-D.II(B)(Ph)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 283 of 1989

Ram Chander Gupta,
60 Subhash Marg,
Chowk, Lucknow,

AND

Post Master,
Head Post Office Chowk,
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/1/89-D-2(B) dt. 3-11-89 has referred the following dispute for adjudication to this Tribunal:—

Whether the Post Master, Head Post Office Chowk Lucknow was justified in terminating the services of Sri Ram Chander Gupta w.e.f. 7-11-85 If not, what relief the workman was entitled to?

2. The admitted facts are that Post Master Chowk Lucknow called for the names of candidates for being considered for appointment as E.D. Packer Chowk Post Office Lucknow from the Employment Exchange. The Employment Exchange sent the name of the workman along with the names of other candidates. On the basis of interview held on 19-4-85 the workman was selected for appointment as E. D. Packer in Chowk Post Office Lucknow. In pursuance of appointment order dt. 30-7-85 he joined as E. D. Packer at the Post Office on 1-8-85. In the letter of appointment it was specifically stated that his appointment as E. D. Packer was on temporary and provisional basis and that the appointment so made would not confer upon him any right for permanent absorption. It was further stated in the letter that the appointment of the

services were liable for termination at any time by the Post Master Chowk Post Office Lucknow without assigning any reason. Later on vide order dt. 8-11-85 of the Post Master Chowk Post Office Lucknow his services were terminated with immediate effect under Rule 6 of EDA Conduct and Service Rules, 1965. Against the order of termination of his services he made a representation to the Director, Postal Services on 26-11-85 and Post Master General on 6-1-86. However, the Director, Postal Services rejected the representation.

3. The workman alleges that his services were illegally terminated by the Post Master Chowk Post Office Lucknow in order to accommodate one Sri Shyam Behari Pandey r/o 82/23 Guru Govind Singh Marg, Lucknow under the directions of Director Postal Services Lucknow who is not competent/appointing authority of E. D. Packer. According to him Sri Pandey did not fulfilled requisite condition prescribed for the post of E. D. Packer laid down in Director General Post & Telegraph Letter No. 45/22/71/SPB-1/PEN dt. 3-9-82. Moreover, the name of Sri Pandey on account of the area of which he is resident could not be sent by the Employment Exchange nor it was sent for consideration in response of the requisition made by the postmaster chowk post office Lucknow to the Employment Exchange. What happen was that Sri Pandey and certain members of the staff working at chowk post office made a representation on 1-1-85 to the post master chowk post office Lucknow for his employment as E. D. Packer on humanitarian grounds which representation was forwarded by the said post master to the Director Postal Services. Ann.5/Ext. W-5 is the copy of the said representation and annexure VI to the claim statement/Ext. W-VI is the copy of letter dt. 20-4-85 by means of which the post master referred the matter of Sri Pandey to the Director Postal Services Lucknow. In fact Sri Pandey was a nominee of Sri Shiv Shanker Srivastava an incumbent of the post who having been allowed to work outsider postman at interval in Chowk Post Office was required to give a substitute at his own risk and responsibility. Sri Shiv Shanker Srivastava was approved a departmental postman in the month December 1984 and was sent for training in the first week of January 1985. It was after that the post of E. D. Packer fell vacant.

4. It is further alleged by the workman that against the order of termination of his services he filed a writ petition no. 1293 of 1986 before the Hon'ble High Court of Judicature At Allahabad, Lucknow Bench, on 19-2-86, but the same was dismissed on the statement of his counsel that the workman would seek his remedy before the Industrial Tribunal under the Industrial Disputes Act. He has also challenged the order of Director Postal Services Lucknow on the ground that the Director Postal Services Lucknow rejected his representation summarily without giving any reason for its rejection. The workman has, therefore, prayed for his reinstatement with full back wages and all consequential benefits. He has also claimed a sum of Rs. 2000 by way of costs of the proceedings.

5. The management deny that the services of the workman were terminated in order to accommodate Sri Shyam Behari Pandey. In fact his services were terminated in pursuance of the appellate order of the Director Postal Services Lucknow in D. O. Letter No. RDL/EDA/Genl./LKO/2 dated 4-11-85, the Director Postal Services, Lucknow had found the case of Sri Pandey as genuine. He took into consideration the fact that Sri Pandey had worked on the said post satisfactorily for more than three years from 17-12-80 to 1-8-85. The management admit that Sri Pandey is the resident of Lucknow 19 Zone (Lal Kuwan Post Office Delivery Area) while the workman is resident of Lucknow-3 Zone (Chowk Head Post Office Delivery Area). The management have further admitted that the representation made by Sri Pandey was forwarded by the Post Master Chowk Post Office Lucknow to the Director Postal Services Lucknow for consideration. According to the management the appointment of the workman was provisional and he was specifically informed that his services were liable to be terminated at any time without assigning any reason. Thus the workman has no case at all.

6. In his rejoinder the workman alleges that the order of appointment dt. 31-7-85 issued by the Post Master Chowk Lucknow was not in the proper form prescribed by the Director General P&T. He has also alleged that Sri Pandey was working as a substitute and have acquired no right of appointment as a regular employee.

7. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the workman has examined himself the Postal Department has examined Sri Om Prakash Sr. Post Master Chowk Lucknow.

8. The first point to be looked into is as to on what terms the workman was appointed. Annexure 2 to the claim statement/Ext. W-2 is the copy of order of appointment but since there was a dispute whether the word before the Words 'Assigning any Reason' should be 'with' or 'without' the workman was ordered to file the original appointment letter. It was filed by the workman on 14-3-91. It is Ext. 11. From the letter of appointment it is abundantly clear that his appointment as E. D. Packer was purely on provisional and temporary basis. It was made clear that such an appointment would not confer upon him any right for permanent absorption in the postal service. It was also clearly stated in it that his services were liable for termination at any time by the post master Chowk Lucknow.

9. In his cross examination the workman has admitted that in all he had worked for three months and six days. Having not worked for 240 days or more within the meaning of section 25B I.D. Act, provisions of sec. 25F I.D. Act in his case are not attracted at all. From the letter of termination copy annexure 4/Ext. W-4 to the claim statement it is clear that his services were terminated under Rule 6 of E.D.A. Conduct and Service Rules 1965. Rule 6 lays down that the service of an employee who has not already rendered more than three years continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without any notice. Thus I find that the workman has no case at all. The argument that the order of appointment was not in proper form is of no consequence in the present case.

10. All that has been alleged by the workman is that his services were terminated in order to accommodate Sri Pandey who is not before the Tribunal. In para 3 of his affidavit the management witness has deposed that Sri Pandey had worked as ED.C1.IV Chowk as a substitute vide Shiv Shanker since 17-12-80 excepting periods 17-11-82, 18-11-82, 12-6-83, 13-6-83, 1-4-84 to 3-4-84 and 10-12-84 to 31-12-84. Thus he had worked for more than 4 years and six months. There has been no cross examination of the management witness on that point from the side of the workman. He has further deposed that on regular promotion of Sri Shiv Shanker to the post of Postman Cadre the then Sr. Post Master Chowk allowed him to work since 11-12-80. Ext. M-2 is the copy of D. O. Letter dt. 4-11-85 to the Director Postal Services, Lucknow. It seems to have written in pursuance of the reference made by the Post Master Chowk about the representation of Sri Pandey. In the D. O. letter there is reference to the effect that Sri Pandey completed for more than 3 years of employment as E. D. Packer. As such his removal from service on what ever ground should have been brought into the fact only by observing rule 8 of EDA Conduct and Service Rules 1965. It was also made clear to the Post Master Chowk Lucknow that in case Sri Pandey fulfilled all the conditions for employment/continuous as E. D. packer in the chowk post office he should have been allowed to continue as such.

11. From the documents filed by the workman with his claim statement it is apparent that the case of Sri Pandey was under consideration from before the appointment of the workman. As Sri Pandey had a good case, naturally the workman had to go as his appointment was also temporary and provisional and could be terminated at any time without assigning any reason. Hence, I find no substance in the case set up by the workman.

12. Accordingly it is held that the action of the post master Head Post Office Lucknow in terminating the ser-

vices of Sri Ram Chander Gupta workman was justified and legal. Consequently the workman is entitled to no relief.

13. Before parting with it I would like to state that Kumari Lekha Vidyarthi was appearing as authorised representative for the management in the case did not appear to argue the case despite several opportunity sought by the management for the same. Even the management witness was examined in her absence.

14. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 7 अप्रैल, 1992

का. धा. 1184—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रसिद्धि द्वारा उक्त कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण महमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-4-92 को प्राप्त हुआ था।

[सं. एल-40012/151/90-आईआर (डीयू) (नोटीं)]

के.वी.बी. उण्णी, उक्त अधिकारी

New Delhi, the 7th April, 1992

S.O. 1184.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Asstt. Engineer, Vasna Exchange, Ahmedabad and their workmen, which was received by the Central Government on 6-4-92.

[No. L-40012/151/90-IR(DU)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI H. R. KAMODIA, PRESIDING OFFICER, AHMEDABAD

Ref. (ITC) No. 31 of 1991

ADJUDICATION :

BETWEEN

Vasna Telephone Exchange, Vasna.

AND

The workmen employed under it.

In the matter of reinstatement of Shri Shrigod Mahesh Laxmanbhai in service with full back wages from 11-11-85 and continuity of service.

APPEARANCES :

Shri Bhargav Joshi, Advocate— for the first party.

Kum. Ashaben Gupta, Advocate— for the second party.

AWARD

An industrial dispute between the above-named parties has been referred for adjudication under section 10(1) of the I.D. Act by Govt. of India, Labour department's Order No. L-40012/51/90/LR/DU dt. 19th April, 1991. This matter has been allotted to this Tribunal for adjudication.

2. The industrial dispute relates to the question whether the action of the Asstt. engineer, Vasna Exchange, Vasna Ahmedabad in not allowing the workman Shrigod Mahesh Laxmanbhai to resume duty w.e.f. 11-11-85 is justified and if not what relief the concerned workman is entitled to ?

3. Ex. 7 is the statement of claim filed by the second party wherein it has contended that the concerned work-

man joined the service of the first party on 5-12-83. He had put in a continuous service of 676 days. He had put in a continuous service of 240 days in every C. Y. On 11-11-85 while he was on duty in the truck of the ownership of the first party, it met with an accident as a result of abrupt application of brakes resulting in the falling of heavy iron frames on his body. He therefore sustained serious injuries. He was first taken to a dispensary of a private doctor. Therefore he was admitted to Civil Hospital. Therefrom he was again taken to V. S. Hospital or he had sustained a fracture. He remained in that hospital for a period of 9 days. During this period nobody on behalf of the first party had come to see him. He had sent all the medical case papers and certificates to the Asstt. Engineer, Vasna for grant of leave and financial help. His request was not taken into consideration. He had therefore sent repeated requests by sending letters by registered post which was refused by the asstt. engineer, Vasna. He was unable to move because of the fracture on his leg. After the fracture was removed from his leg he had personally met Shri R. C. Shah on 13-5-86 with the help of orthopaedic instrument. He was instructed to see Shri H. K. Patel. Thereafter he was not given any work. He was orally told that his case was under consideration. On 1-6-89 he had requested Shri R. C. Shah in writing to give work to him. At that time he was told that his services were already terminated from 11-11-85, the date on which the accident took place. No order of termination was given to him. Shri Shah also persuaded him to withdraw the case instituted by him under the workman's Compensation Act. Thus the first party had arbitrarily terminated his service without following the procedure laid down for the purpose as well as the rules framed therein. The principles of natural justice were also contravened. He has sustained disability because of the accident. Therefore the second party has prayed to direct the first party to reinstate him in service with full back wages and continuity from 11-11-85. Ex. 11 is the written statement filed by the first party wherein it has inter alia contended that the concerned workman had met with an accident on his leg. The junior telecom officer had immediately arranged for all necessary medical help. As he had a fracture on his leg the said officer had got him admitted in V. S. General Hospital in Ahmedabad. It has not admitted to have received medical certificate and other necessary papers. The welfare section had also not received any papers from him. Shri R. C. Shah had not instructed him to see Shri H. K. Patel. It was not possible for the assistant engineer to take him on duty as he was engaged only for two months for a particular work. That work had become over and all the casual labourers engaged for that work were retrenched. Still however, his case was sympathetically considered. He was asked to join Naranpura E 10 B Exchange. A noting to this effect was made in the office file. The concerned workman had not reported for duties accordingly. It has denied that Shri R. C. Shah had told him that his services have been terminated from 11-11-85. He was also not told to withdraw the case preferred under the workman's Compensation Act. During the conciliation proceedings it had agreed to reinstate the workman. He was asked to report at Vasna exchange on 7-5-90. At that time he was told that as he had not reported for duties on 15-10-86 he would not be entitled for back wages. He did not report for duty on 7-5-90 as per the offer made during conciliation proceedings. Therefore, it had prayed to dismiss the reference with cost.

4. The deposition of the concerned workman is at Ex. 26. The first party had examined Shri R. C. Shah at Ex. 29. This is the only oral evidence on the record. The parties have produced some documents on which they rely in support of their respective contentions. I have heard the parties and I have gone through the entire record of the case.

5. Some facts are not in dispute. The concerned workman was engaged as a casual labourer on 11-11-85. He was on duty in the truck of the ownership of the first party. The driver of that truck in order to avoid occurrence of an accident had applied abrupt breaks with the result that the heavy iron frames fell on the body of the concerned workman which resulted in fracture on his leg. He was, therefore, hospitalised. The fracture on the leg would

have naturally confined him to bed. That must have restricted his movements at least for some days. In view of this accident it was not possible for him to report for duty and the officers of the first party knew about this accident because it has in its written statement contended that one officer Shri Trivedi had arranged for all necessary medical help and had got him admitted in V. S. General Hospital, Ahmedabad. Therefore the first party could not have insisted him to resume duty on the date of the accident and for few days even thereafter. It was submitted that the concerned workman had not sent the fitness certificate and so it was not possible to take any decision. Ex. 23 & 24 are the xerox copy of the letters purporting to have been written by the first party to the concerned workman. By these two letters the concerned workman was not required to produce fitness certificate and satisfy the first party that he had become fit to resume duties. On the contrary by these letters he was required to report for duties. It is in this way that the first party can be said to have waived the alleged requirement to produce fitness certificate before permitting him to resume duties, after he met with an accident. Thus it appears from the written statement that at the stage of conciliation proceedings the concerned workman was asked to report for duties at Vasma exchange on 7-5-90 and that he had not accordingly reported for duties. Thus the first party was willing to reinstate him in service at least with effect from 7-5-90. Still however, it is pertinent to note that the first party in the written statement contended that this Tribunal should be pleased to disallow the prayers prayed for by the second party and thereby it has also requested this Tribunal to disallow the prayer for reinstatement. At the time of the arguments the learned advocate of the first party submitted that the question of reinstatement is also contested on the ground that the concerned workman had not referred for duties though he was asked to do so during conciliation proceedings. It was further submitted that the concerned workman had not made any attempt to get himself re-engaged in the original work. There is absolutely no merit in this submission. The concerned workman had on 1-8-86 written a letter to the first party. Its copy is at Ex. 18. This letter was received by the first party as is evident from the copy of its noting Ex. 22. That noting was made consequent on the receipt of the said letter of the second party. Thus in the month of August, 1986 the concerned workman had requested in writing to take him back in service or to provide him with work. Therefore the above submission can be said to have ignored the letter at Ex. 18. There is no provision of law or dictum laid down by any High Court that the workman should at reasonable intervals continue to repeat his request for engagement in the original work. He had once made such a request in writing. Therefore it appears that the first party has made an abortive attempt for the fag end of the trial of this case to stall the reinstatement of the concerned workman on his original post. This aspect as got to be taken into consideration for deciding whether or not the concerned workman should be awarded back wages and if yes of what period. The conciliation proceedings had preceded immediately before the present reference and so the first party was willing to take him back in service w.e.f. 7-5-90. Therefore, one thing is certain that the concerned workman will not be entitled to back wages from 7-5-90. He should have reported for duties. He had not done that presumably because the question of back wages was not solved till then. It appears that he wanted a solution to the question of back wages. So he had not reported for duties and thereby he had tried to exert pressure upon the first party to solve the question of back wages. He ought to have reported for duties on 7-5-90 and at that time he should have made a declaration that his dispute regarding back wages is kept intact and that he does not waive his right to claim back wages. Therefore he should have reported for duties with such reservation. He had not done that. His decision not to report for duties on the ground that back wages were not paid to him or the question of ward of back wages was not solved was not correct. It was submitted by the learned advocate of the first party that by letters Ex. 23 & 24 the concerned workman was required to report for duties and so he would not be entitled to back wages at least from 15-10-86, which is the date of the letter at Ex. 23. Both these letters are doubted by the second party. It was contended that such letters were never written by the first party and consequently they were never posted and so there

did not arise any question of receipt of the same by post by the concerned workman. Both these letters do not bear any outward number. Normally when a letter is sent to some person it would bear the outward number and it will have to be entered in the outward register. The first party has not produced the outward register to show that the letters at Ex. 23 & 24 were entered therein on due dates. Therefore when the outward register is not produced to prove this fact there are reasons to believe that they were never entered in the outward register because they were never despatched by post to the addressee. At the same time the first party must be maintaining postal service register. The envelope containing the letters in question must have been affixed with service postage stamps, of some denominations and therefore the entry must have been made about the use of those service postage stamps in the service postage register. Therefore the first party ought to have produced the entries dated 15-10-86 and 30-10-86 from service postage register to show that on those dates some letter was sent to the concerned workman. Thus this best available evidence is not produced in this case. There are therefore reasons to believe that there may not be an entry pertaining to the service of postage stamps pertaining these letters and so there are reasons to believe that such letters were never sent to the concerned workman. Hence these letters cannot be taken into consideration. The noting Ex. 27 will go to show that in the beginning the first party was not willing to take him back in service. This is also contended in page 5 of written statement Ex. 10. The first party has averred that the concerned workman and other persons were engaged for two months for doing a particular work and at that work was over, the casual labourers were retrenched and consequently it would not be possible to give any work to the concerned workman. Therefore if we do not take into consideration the letters at Ex. 23 and 24 it must be held that the offer of employment was made by the first party for the first time during the conciliation proceedings and so the concerned workman would be entitled to back wages from 11-11-85 till 6-5-90.

6. Ex. 60 will go to show that on 31-10-85 the concerned workman was in the employment of the first party. Ex. 17 is an identity card issued on 5-12-83. It also contains columns pertaining to presence of the workman. It shows that he had practically worked on all the working days in all the months of the years. The amounts paid to him in different months are also mentioned therein. Ex. 20 is the registered packet addressed to Shri R. C. Shah by the concerned workman. The postal endorsement on the packet shows that the addressee had refused to accept that packet. There is a presumption under the provisions of General Clauses Act that this registered packet must have been shown to the addressee and that he had refused to accept it. Therefore it will amount to service of the contents of this registered packet. The registered packet was opened in this Tribunal in the presence of the parties. The papers taken out therefrom were the certificate issued by a doctor and a forwarding letter dt. 4-3-86, whereby the concerned workman had informed his inability to walk because of plaster bandage on his leg. He had thereby prayed for grant of leave. This letter was sent before the letter Ex. 18. Thus he had applied for leave. Unfortunately the first party had refused to accept the registered packet when an attempt to deliver the same was made to it by the postal authority. Ex. 21 is the another registered packet addressed to the first party. The first party had refused to accept it. It was opened in the presence of the parties. The papers taken out therefrom is a letter dated 16-6-89, whereby the first party was requested to take him back in service and to pay to him full back wages. Unfortunately this letter was also not accepted by the first party from the postman. Thus the concerned workman had written on 4-3-86, 1-8-86 and 16-6-89 for taking him back in service. It appears that the first party want to avoid payment of back wages and that is why it had produced letters at Ex. 23 and 24. However there is no evidence to show that such letters were actually despatched. They were not sent under certificate of posting or by registered post. I have already discussed about the outward register and the service stamp register in regard to the entries if any in relation to these letters. Thus the first party had not made any offer of re-employment to the concerned workman. The said offer was made for the first

time at the stage of conciliation proceedings because the first party has in paragraph 7 of its written statement Ex. 10 declared that it had asked the concerned workman to report for duties at Vasna Exchange on 7-5-90. There is no evidence that before that such an offer was made except two letters at Ex. 23 & 24 which cannot be taken into consideration as they are highly doubtful. Therefore when the first party had asked the concerned workman to report for duties at Vasna Exchange on 7-5-90, it must be held that the first party was willing at the stage of conciliation proceedings to take him back in service and so there is now no valid justification for refusing to grant the prayer of the second party for directing the first party to take him back in service. I have also discussed the question of back wages and held that the concerned workman would be entitled to back wages from 11-11-85 to 6-5-90 as he had not reported for duties on 7-5-90 he was not entitled to back wages from that date. At the cost of repetition it should be noted that at the initial stage after the receipt of Ex. 18 by the first party the officer in the noting observed that it was not possible to take him back in service since the work was over and other employees with him were retrenched. So he was treated as having been retrenched at that stage. This aspect has got to be taken into consideration for the purpose of deciding the grant or otherwise of back wages to the concerned workman. The concerned workman has said that he became able to do labour work in the month of December, 1987. However, the first party had refrained from putting a question to him that he was not able to do any labour work prior to December, 1987. He was able to do work in the month of December, 1987. It will not mean that he was not able to do work prior to that. That will go to show that he was able to work in that month and even thereafter. Therefore this will not affect the right of the concerned workman to claim back wages from the first party.

7. In view of what is discussed in the above paragraph of this judgement the present reference will have to be allowed and so I pass the following order.

ORDER

For the reasons aforesaid the present reference is allowed and so the first party is directed to reinstate the concerned workman Shri Shrigod Meheshbhai Laxmanbhai in his original post or in regard to the nature of work which he was doing with back wages from 11-11-85 to 6-5-90 and with the benefit of continuity in service. This order shall be implemented by the first party within a period of 30 days from the date of publication of this award and so the concerned workman would be entitled to regular wages from that date. The first party is directed to pay Rs. 200 by way of cost to the second party and bear its own.

Sd/-

SECRETARY,

Ahmedabad, 10th March, 1992

H. R. KAMODIA, Presiding Officer

नई दिल्ली, 7 अप्रैल, 1992

क्र. प्र. 1185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, चीफ वर्क्स मैनेजर, लोको वर्कशॉप, उत्तर रेलवे जंक्शन के प्रबन्धन के संबद्ध नियोजकों और उनसे कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर, के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-92 को प्राप्त हुआ था।

[नं० एफ-11012/72/89-आई आर. (सी यू) (पीटी)]

कै०बी०बी० उष्णी, डेम्क अधिकारी

New Delhi, the 7th April, 1992

S.O. 1185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Works Manager, Loco Workshop,

N. Railway, Lucknow and their workmen, which was received by the Central Government on 6-4-1992.

[No. L-41012/72/89-IR (DU) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 71 of 1990

In the matter of dispute :

BETWEEN

The Assistant General Secretary,
Uttar Railway Karamchari Union,
39-II-J Multistorey Building,
Rly. Colony, Charbagh, Lucknow.

AND

Chief Works Manager,
Loco Workshop
Uttar Rly., Charbagh,
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-41012/72/89/IR (B) dated 28-2-90, has referred the following dispute for adjudication to this Tribunal :—

Whether Chief Works Manager, Loco Workshop Northern Railway, Lucknow was justified in terminating the services of Shri Dharmendra Kumar w.e.f. 19-10-87 as Khalasi? If not, to what relief the workman was entitled to?

2. The industrial dispute on behalf of the workman has been raised by U.R.K.U., Lucknow (hereinafter referred to as Union for the sake of brevity).

3. The case of the Union in brief is that the workman was appointed on empanellment on the post of Khalasi on 20-12-86 and he continued working without break till 19-10-87 when his services were terminated by means of staff order No. 727 dated 17-10-87 under Rule 301 Rly. Establishment Code Vol. I. In the notice it was alleged by the railway management that the workman was erroneously appointed as son of another employee of the same name and address. The termination being in contravention of the provisions of Section 25-F I. D. Act, it is illegal. The Union has, therefore, prayed for the reinstatement of the workman with full back wages and all consequential benefits.

4. The case is contested by the management of the Rly. The management plead that in pursuance of Notice No. 105-E/Khalasi/RECT dated 21-2-86 applications were invited from the sons of serving railway employees of the Workshop for the post of Khalasi and besides the Employment Officer, Lucknow was also requested to sponsor 300 applications of registered candidates and Registered Association of SC/ST nominated by the Government of India for filling up vacancies of Khalasis in the said Workshop. In response to the said notice the workman also applied for the post of Khalasi declaring himself as the son of Sri Maikoo Lal Ticket No. MTS 474 an employee serving under Shop Superintendent Mill Wright Shop of the Workshop. After his appointment as Khalasi it was detected that the declaration regarding parentage given by the workman was wrong. In fact he was found to be the son of an outsider and not the son of a serving railway employee. Moreover his application was also not sponsored by the Employment Exchange, Lucknow. In other words the workman was found to have obtained employment on wrong declaration and by fraudulent means. Because of it his appointment became void abinitio. Even the Union has not come out with clean hands. The Union has suppressed the above facts. Consequently the services of the workman were terminated under para 301 of the Railway Establishment Code Vol. I w.e.f. from the afternoon of 19-10-1987.

5. In its rejoinder the Union has alleged that notice No. 105-E/Khalasi/RECT dated 21-2-86 was discriminatory being violative of Article 16 of the Constitution of India and the Union reiterates that the workman gave correct name and address of his father who had been a railway employee of this very Workshop. According to the Union the Railway

Administration is estopped from rising this issue at this stage. Moreover, para 301 of Railway Establishment Code Vol. I cannot supersede the provisions of Section 25-F I. D. Act.

6. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the Union has examined the workman, the management have examined Sri Baburam Tewari, A.P.O.

7. The only question involved in this case is whether the workman had obtained appointment on fraudulent representation. Once it is found that he had obtained appointment on fraudulent representation, the provisions of Section 25-F.I.D. Act, would not apply to his case.

8. In para 4 of his affidavit the workman has deposed that he is the son of a retired railway employee. According to him the certificate of this very fact was enclosed by him with his application submitted in response to notice 105-E/Khalasi/RECT, dated 21-2-86. In his cross examination he has deposed that he is the son of Sri Maikoo Lal son of Nankau whose ticket no was MTS 474. In his cross examination he had also admitted the fact that his father retired from the railway service in 1979.

10. On the other hand the management witness Sri Baburam Tewari has filed with his affidavit the photostat copy of workman's application dated 21-2-86 submitted by him in response of notice 105/E/Khalasi/RECT dated 21-2-86. The back of application bears a certificate of Sri Maikoo Lal Ticket No. MTS 474.

11. The question is whether or not the workman is the son of this very Maikoo Lal or not. From the certificate it appears that the said Sri Maikoo Lal happens to be the son of Sri Sukhai and not Sri Nankau, the grand father of the workman. Thus this Sri Maikoo Lal son of Sri Sukhai is a person different from the father of the workman. During the course of cross examination of the management witness Sri D. P. Awasthi the authorised representative for the Union showed to the witness Sr. Maikoo Lal son of Sri Nankau who was present in the court room and who on inquiry gave his ticket No. as 159. The management witness said that he did not know the said person. Thus from the above facts and evidence it comes out that on the date of submission of application, the workman's father was not in the service or the railway, he having retired in 1979. It further comes out that Sri Maikoo Lal son of Sri Nankau is the father of the workman and not Sri Maikoo Lal son of Sri Sukhai whose certificate is found appended on the back of the workman's application. It also comes out that the ticket number of the workman's father was 159 and not 474 as given in the workman's application and as deposed to by him.

12. I may state here that the Shop Superintendent MTS Rly. Loco Motives Workshop Charbagh has also appended a certificate on the back of the workman's application that Sri Maikoo Lal son of Sri Sukhai having ticket No. MTS 474 has been in the service, in the said workshop. Not only this with his affidavit the management have filed the photostat copies of two applications one dated 9-7-87 and the second dated 5-9-87 of Sri Maikoo Lal T. No. MTS 474. These are annexures 2 and 3 respectively. In the first application Sri Maikoo Lal Ticket No. MTS 474 is written that his son Ramakant had also applied for the post of Khalasi in response to the said notice. At the time of interview he was informed that since his elder brother has already been recruited his case cannot be considered. Sri Maikoo Lal has further written in the said application that he has only one son and his name is Sri Ramakant. Almost the same facts were repeated by him in his subsequent application dated 5-3-87 in which he also wrote that one Sri Dharmendra Kumar had obtained employment describing him (Sri Maikoo Lal T. No. MTS 474) as his father.

13. Thus from the above evidence it stands fully proved that the workman had obtained employment of the Khalasi on fraudulent representation. This being so his appointment is void ab-initio. Simply because he had worked for more than 240 days prior to the termination of the service, is of no assistance to him. It has been rightly pleaded by the management that the Union has not come out with clean hands. Hence, it is held that the action of the Chief Works Manager, Loco Workshop Northern Railway Lucknow in

terminating the services of Sri Dharmendra Kumar w.e.f. 10-10-87 (a.m.) is neither illegal nor unjustified. Consequently the Union/Workman is entitled to no relief.

14. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 7 अप्रैल, 1992

का.ग्रा.1186.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी चीफ मैकेनिकल इंजीनियर सी डब्ल्यू शाप, उत्तर रेलवे लखनऊ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-4-92 को प्राप्त हुआ था।

[एल-41012/43/89-डी-2 (बी) (पीटी)]

के०बी०बी० उष्णी, डेस्क अधिकारी

New Delhi, the 7th April, 1992

S.O. 1186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dy. Chief Mechanical Eng. C&W Shop, NR Lucknow and their workmen, which was received by the Central Government on 6-4-92.

[No. L-41012/43/89-D.II(B)(P)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

In the matter of dispute :

BETWEEN

The Divisional Sectt.

U.R.K.U. 39-II J Multistoreyed

Rly. Colony, Charbagh, Lucknow.

AND

The Dy. Chief Mech. Engineer
C&W Shops Northern Rly.
Alambagh, Lucknow.

Industrial Dispute No. 319/1989

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-41012/43/89/D.II(B), dated 19-12-89, has referred the following dispute for adjudication to this Tribunal :—

Whether the Dy. Chief Mechanical Engineer C&W Shop, Lucknow was justified in removing Sri Pir Mohammad, Khalasi ticket No. 997/B w.e.f. 2-11-83 ? If not, what relief the workman was entitled to ?

2. The industrial dispute on behalf of the workman has been raised by Uttar Railway Karamchhari Union (hereinafter referred to as Union for the sake of brevity).

3. The case of the Union in brief is that the workman Sri Pir Mohammad was appointed as a Khalasi in the service of the railway on 14-9-57. On 30-6-83, while he was working as Hammerman in Wagon Shop, he was put under suspension. He was given major penalty chargesheet (S.F. 5) on 1-7-83, which was duly replied by the workman.

4. The Union alleges that the inquiry under the Railway Servant Disciplinary and Appeals Rules, 1968, was held against

the workman, but it was not conducted fairly and properly. The workman who is an illiterate person was not given an opportunity to represent himself during the inquiry by the competent railway servant for proper cross-examination of management witnesses nor he could submit his own defence statement. He was not furnished with the copies of evidence recorded during the course of inquiry. Even inspection of documents relied upon by the management was not allowed. Besides the proceedings were conducted in a language not known to the workman. As such no inquiry can be said as held on the alleged assault made by the workman on Sri Ayodhya Prasad Awasthi, Time Keeper, on the basis of the finding given by the E.O. and accepted by the disciplinary authority the disciplinary authority removed him from service on 2nd November, 1983. Against the order of punishment the workman filed an appeal before Dy. C.M.E. (W) Alambagh, Lucknow but the same was rejected by the appellate authority without assigning any reason on 22nd December, 1983. Thereafter the workman submitted a review petition before the General Manager, New Delhi on 15th December, 1983 which too was rejected by a non-speaking order dated 29th August, 1989. Thus the order of punishment awarded to him is illegal. Further the punishment awarded was excessive.

5. In the claim statement reference has been made to annexure 4 at page 2, but in the whole of the claim statement no reference has been made to any other annexure such as annexures I to III. In fact no document by way of annexures has been enclosed with the claim statement which has been signed by Sri Tewari in his capacity as Zonal Working President of the Union.

6. The management admit that the workman was initially appointed as temporary khalasi on 14th September, 1957. According to the management his annual increments were always deferred from their due dates due to LWP. He was promoted to officiate as PPTO w.e.f. 25th February, 1974. His annual increments were again deferred due to strike and DWP. On account of punishment he was reverted to the post of khalasi w.e.f. 3rd November, 1982 for two years with loss of seniority. The management further plead that prior to the imposing of punishment of removal from service w.e.f. 2nd November, 1983, he had been awarded 12 punishments details of which appear at pages 2 and 3 of the written statement.

7. It is further pleaded by the management that at the time of his removal from service w.e.f. 2nd November, 1983 inquiry into three other major penalty charge sheets were also pending against him. He was issued a major penalty charge-sheet dated 21st June, 1976 for wasting time and unsatisfactory working. The E.O. returned the case with the remark that the workman had already been removed from service vide order, dated 2nd November, 1983. He was also served with another major penalty chargesheet on 20th March, 1979 for refusing to do the work allotted to him by the supervisor. While the inquiry was in progress the E.O. returned the case on the same ground that he had been removed from service w.e.f. 2nd November, 1983. The third charge sheet with regard to major penalty is dated 20th July, 1983 and the charge was that on 30th June, 1983 he had assaulted Sri Ram Autar Sr. Clerk of Wagon Shop. On similar grounds the E.O. returned the papers relating to the inquiry.

8. With regard to the present case, the management plead that on 30th June, 1983, it was reported by the Shop Suptd., Wagon Shop that the workman had assaulted Sri Ayodhya Prasad Awasthi, Time Keeper. On the said report the workman was placed under suspension w.e.f. 30th June, 1983 (a.m.). Subsequently a major penalty charge-sheet dated 1st July, 1983 was also issued by the Production Manager to the workman at his Home Address. The workman submitted his explanation dated 2nd August, 1983, after considering which the disciplinary authority passed orders for holding an inquiry against him. Sri K. C. Sharma Shop Suptd./Machine Shop was appointed Enquiry Officer. The E.O. conducted the inquiry fairly and properly. The workman was given all reasonable opportunity to defend himself during the inquiry. The E.O. recorded the finding of guilty against the workman. The disciplinary authority accepted his findings and passed an order of removal from service against the workman, removing him from service w.e.f. 2nd November, 1983 (a.m.).

Against the order of punishment the workman referred an appeal on 8th December, 1983 to Dy. C.M.E. (W), Lucknow who after careful consideration rejected it. Therefore the workman filed a revision appeal dated 9th February, 1984 before Additional CME/CB/Lko. Since the said officer was not competent to hear the appeal, the workman was advised to sent his revision appeal to CME/NR/NDLS. As the revision was filed with great delay after the expiry of the statutory period, the workman was asked to submit a fresh revision petition giving reasons for delay. Upon that the workman submitted a fresh revision petition dated 9th February, 1984/15th December, 1984 which was forwarded to the competent authority. The competent authority after carefully considering his case rejected it. Thereafter the workman preferred a mercy appeal to the Dy. CME N.R. Alambagh, Lucknow, but since the workman had already been informed about the decision of the higher authorities it was not possible for the Dy. C.M.E. to decide the case.

9. Thus for the above reasons, there is no substance in the case set up by the Union for the workman.

10. In his rejoinder the Union alleges that the C&W Shop administration being prejudiced against the workman, awarded to him so many unjust punishments. According to the Union since the order of removal from service dated 2nd November, 1983 is under reference, mention of previous cases has no effect. In the rejoinder the Union has prayed for the reinstatement of the workman with full back wages.

11. In support of its case, the Union has examined the workman. On the other hand, in support of their case, the management have examined Sri R. C. Srivastava, APO. With his affidavit the management witness has filed the copy of order of punishment dated 2nd November, 1983, passed by the disciplinary authority. The management also filed the copy of inquiry report and copy of inquiry proceedings summoned by the Union by means of its application dated 11th October, 1990.

12. In this case, Sri B. T. Tewari, the authorised representative for the Union has filed written arguments. On the other hand Sri B. P. S. Chauhan, the authorised representative for the Management made his oral submission. After going through the evidence on record I find no force in the case set up by the Union for the workman nor any extenuating circumstances for interference with the order of punishment awarded to the workman.

13. The first plea raised by the Union is that the workman was not given an opportunity to represent himself through another competent railway servant. I find no force in it. Although a major penalty chargesheet (S.F.5.) issued to the workman has not been filed by either side, a form is available in the Book on Railway Servant Disciplinary & Appeal Rules 1968. It is standard form of chargesheet. Para (3) of it clearly states that the charge-sheeted workman is informed that he may, if he so desires, take the assistance of another railway servant/an official of a railway Trade Union for inspecting the documents and assisting him in presenting his case before the enquiring officer. It is also stated that he should nominate one or more persons in order of preference. Then there is a reference at page 2 of the inquiry proceedings to the effect that once again the workman is given time till 21st September, 1983 to bringing defence representative for his assistance. The workman has denied this fact in his cross-examination but I am not prepared to believe him. At page No. 2 the signatures of the workman appear. Proceedings appear in Hindi. It also falsifies the case set up by the Union on behalf of the workman that the inquiry proceedings were not drawn in a language known to the workman. The inquiry proceedings show that but for the inquiry report every thing was done in Hindi. There is nothing from the side of the Union to show that the inquiry officer was in any way prejudiced against the workman. In para 4 of his statement in cross-examination the workman has deposed that he never made any complaint to any higher officer against the E.O. that the E.O. was biased against him. I may also state here that in the inquiry report also the E.O. has specifically written that the workman did not engage any defence helper and he wanted to defend himself personally. When the E.O. was not biased nor had any ill against the workman it was not expected of the E.O. to write some thing which had not actually happened.

14. The next plea is with regard to denial of opportunity to produce evidence in defence. Towards the end of his cross examination, the workman has clearly stated that the E.O. never prevented him from producing his witnesses. The same fact is borne out from page 54 of the inquiry proceedings. At the inquiry the workman examined himself. It was inquired from him whether he had any other witness to produce to which the workman replied 'Mere pas koi gawahi aur nahin hai'.

The last lines of the Enquiry proceedings appearing at page 55 bearing the signatures of the workman read as under—

Mujhe apane bachav me koi gawahi nahi pesh karai hai aur meri es baat ka sabut deta hoon ki mujhe inquiry me apane bachav ke pura pura mouka diya gaya.

I fail to understand how in the circumstances and in the light of the above statement it is being said by the Union on behalf of the workman that the inquiry was not conducted fairly and properly. So I find no force in this contention.

15. Thirdly it has been submitted on behalf of the workman that during the inquiry the workman was not given an opportunity to cross examine the management witness. This is also belied by the inquiry proceedings which contain the evidence of the witnesses examined before the E.O. From some of the witnesses produced by the railway management the workman asked no question in cross examination and from some of the witness the evidence which really transferred the workman cross examined them. Even witnesses who were not cross examined by the workman were cross examined by the E.O. to arrive at the truth. So in this plea also I find no force.

16. Another plea raised by the Union in the claim statement is that inspection of document was not allowed by the management. Here again I would like to refer to the standard form no. 5 relating to major penalty chargesheet. In para two it is written that the chargesheeted employee is hereby informed that if he so desires, he can inspect and take extracts from the documents. Reference to inspection of documents by the defence representative on his behalf is also found made in para 5. But for the oral testimony there is no documentary evidence to prove it. Hence even in this plea of the Union I find no force.

17. Hence I hold that the inquiry was conducted fairly and properly by the E.O. in accordance with the principles of natural justice.

18. The next point raised for consideration is whether the findings are supported by evidence or not. I have carefully gone through the evidences and findings recorded during the inquiry and find that there is no material before me to differ with the findings arrived at by the E.O. So on this point also, the Union has no case at all.

19. Lastly, in the written arguments filed it is submitted that there is no justification for awarding a punishment of removal from service of the workman who had put in 26 years of continuous service. The Union has sought indulgence of the Tribunal u/s 11-A I.D. Act on the quantum of punishment.

20. Looking to the facts and circumstances of the case I do not find sufficient grounds to interfere with the punishment awarded to the workman. In para 2 of the written statement, the management have referred to 12 cases of punishment to the workman and in para 4 the management have referred to three other major penalty chargesheet inquiries into which could not be completed because of passing of orders from removal from service w.e.f. 2-11-83. These facts have been corroborated by the management witness by means of his affidavit. Even in para 6 of his cross examination the workman has admitted that he had been punished several times prior to the present punishment. This fact is also found stated in para 2 of the rejoinder filed by the Union. Details of the nature of misconduct for which he had been awarded punishment are also given in W.S. at pages 2 and 3. So looking to all these facts I do

not feel inclined to interfere with the order of punishment.

21. Hence, it is held that the action of the management in awarding the punishment of removal from service w.e.f. 2-11-83 to the workman is neither illegal nor unjustified. Consequently the workman/Union is held entitled to no relief.

22. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 10 अप्रैल, 1992

का आ 1187—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण के केन्द्रीय सरकार साध्य ईस्टन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम अधिनियम के पंचवट को प्रकाशित करती है, औ केन्द्रीय सरकार को 4-4-92 को प्राप्त हुआ था।

[एन-41011/1/87-डो 2(नो) 7(पीटी-1)]

के बी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 10th April, 1992

S.O. 1187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of South Eastern Railway and their workmen, which was received by the Central Government on 8-4-92.

[No. L-41011/1/87-D.II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT:

Sr R. K. Dash, J.L.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

Industrial Dispute Case No. 12 of 1988 (Central)

Dated, Bhubaneswar, the 28th March, 1992

BETWEEN

The management of South Eastern Railway, Khurda Road
First Party-management.

AND

Their workmen, namely, S/Shri—

1. Hari, S/o Khetra
2. Maheshwari, S/o Khetra
3. Gopi, S/o Kanhu
4. Sana, S/o Bama
5. Kela, S/o Bama
6. Bhagurathi, S/o Pandhu
7. Hadu, S/o Manguli
8. Narayan, S/o Banambar
9. Surendra, S/o Krupasindhu
10. Purna Khuntia, S/o Uchhab
11. Shyam, S/o Ram
12. Mochiram, S/o Agadhu
13. Golekh, S/o Arjuna
14. Bidyadhar, S/o Narasingha
15. Kubera, S/o Jadu
16. Nahu, S/o Panu
17. Hadu, S/o Goura
18. Laxmidhar, S/o Bauria
19. Dasso, S/o Kunja
20. Padma, S/o Gopi
21. Lingaraj, S/o Bauribandhu
22. Kala, S/o Kanhu

23. Raja, S/o Math
24. Dhruva, S/o Khetra
25. Budhia, S/o Raghu
26. Laxmidhar, S/o Raja
27. Kaibalya Pradhan, S/o Basudev
28. Narayan, S/o Boli
29. Dandu, S/o Jadu
30. Bhaga, S/o Jai
31. Dussa, S/o Bira
32. Lakhia, S/o Banka
33. Bauria, S/o Biswanath
34. Parikhit, S/o Krishna
35. Battu, S/o Pankaja
36. Lingaraja, S/o Maheshwar
37. Judhishira, S/o Mahadev
38. Sankar, S/o Santan
39. Jagar, S/o Chema
40. Arjuna, S/o Aparity
41. Kalu, S/o Baban
42. Bharat, S/o Loknath
43. Shuama, S/o Rama
44. Kunja, S/o Brudaban
45. Suresh, S/o Narayan and
46. Dassa, S/o Gadei.

APPEARANCES :

Sri H. Routray, Advocate—For the first party—management

Sri K. Pradhan—For the second party—workmen.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2-A) of the Industrial Disputes Act, 1947 (14 of 1947) and by their Order No. L-41011/1/87-D.II(B), dated 15th March, 1988 have referred the following dispute for adjudication by this Tribunal :—

“Whether the demands of S/Shri Kaibalya Pradhan and 45 other casual employees of S.E. Railway, Khurda Road for payment of same salary and service conditions as that of the concerned regular employees is justified? If so, to what relief the workmen are entitled?”

2. Briefly stated the case of the second party-workmen is that since 1961 till early part of 1988 they had been engaged as labourers by the first party-management and were doing various works such as maintenance of railway tracks, change of timbers on the railway bridge, replacement of wooden slippers etc. During their engagement their attendance was being taken by the Time Keeper and they were being paid wages as temporary employees. They were denied of all the service benefits such as, medical allowance, night duty allowance, travelling allowance, dearness allowance, additional dearness allowance, gratuity, winter dress etc. though such benefits were extended to their counter-parts doing the same and similar work being engaged as permanent employees. They put-fourth a demand before the management claiming equal pay for equal work and other service benefits as are being given to the permanent employees doing the same and similar work. Instead of considering their demand the management being vindictive retrenched them from their services and since then they are unemployed and sitting idle. They have, therefore, prayed to answer the reference in affirmative.

3. The case of the first party—management on the other hand is that the demand of the second party-workman are all unjustified and not legally tenable as because such reference was made some of the workmen approached the Central Administrative Tribunal claiming self-same relief which was ultimately disallowed.

As to the factual aspects of the case, it is pleaded by the management that the second party—workmen being casual labourers had been engaged for doing seasonal work such as

maintenance of railway tracks, patrolling in night time during monsoon. Their appointments were purely temporary. In the appointment letters it was clearly mentioned that they being casual labourers their services would stand terminated with effect from a particular date without any notice. So, they having accepted their job which was purely conditional they can not claim the benefits as are being given to the permanent employees. However, in so far as the wages of the casual labourers are concerned, the first party—management admits that the workmen are entitled to the scale of pay equal to that of temporary railway servants and are also eligible to certain benefits such as, leave, pass, medical facility etc. only on completion of 120 days of service. The railway being a vast organisation there are many temporary and seasonal works besides the maintenance work. For doing such works casual labourers are engaged from time to time and are discharged on completion of the work. Whenever such work is again taken-up the retrenched workers are given preference to others at the time of recruitment.

In substance, the case of the management is that the second party-workmen being casual labourers engaged during monsoon period for doing temporary work can not claim the benefits as are being given to the gangmen who in course of this employment have acquired knowledge in the maintenance of railway tracks and for doing other works necessary for the protection and safety of the railway.

4. In view of the pleadings of the parties, the crux of the issue is whether 46 casual employees of the South Eastern Railway, Khurda Road are entitled to equal pay for equal work and other service conditions as are being given to the regular employees.

5. In course of hearing one witness was examined on behalf of the workmen who would say in his evidence that though all the workmen on being engaged by the management were doing work for whole of the year but subsequently the management followed a peculiar procedure by entrusting the major work to the contractors for which they were given engagement only for a period of four months in each year. As regards payment of wages is concerned, they were being paid Rs. 8.50 paise per day whereas their counter-parts in regular service were being paid more although the nature of work and the hour of work for both the categories of the workers were the same and similar. Payment of low wages to them continued till June '87 and thereafter they were paid equal wages as was being paid to the regular gangmen but as the management refused to treat them as regular employees and to give them other service benefits they raised the dispute which was subsequently referred to this Tribunal for adjudication. He went on to say that during pendency of the proceeding the management absorbed 37 out of 46 affected workmen in regular service. From the remaining some died during pendency of this proceeding. However, the management refused to take him and the rest three workmen namely, Narayan Marthy, Dusasan Ranjit and Golak Pradhan in regular service. The reason for refusal is that the doctor on examining them declared unfit. The findings of the doctor, if any, were neither intimated to them in writing nor the doctor told them if they had any defect.

The said witness was cross-examined in part by the first party-management but on the subsequent date none appeared to cross-examine him further. So, his cross-examination was closed.

6. On a scrutiny of the evidence of WW-1 it transpires that since July, 1987 the management started paying the affected workmen equal wages for equal work but refused to give them other service benefits. During pendency of the present proceeding the management absorbed 37 affected workmen in regular service except him and three others as named above. The refusal of employment is based on the doctor's report who on examination found them unfit. The report of the doctor, if any, has not been produced by the management. In absence of any material, it cannot be said that those four workmen are physically unfit to be absorbed in regular service. This apart, it does not appear to common sense that when they being physically well were allowed to work as casual labourers till early part of 1988

they suddenly became unfit for doing the same and similar work. It is elicited from the cross-examination of WW No. 1 that he is looking after the case on behalf of all the aggrieved workmen. So, it may be the reason that because he and his three associates are the leaders of all the workmen involved in the present proceeding the management is desirous to keep them out of employment.

7. In view of my discussions made above, I hold that the afore named four workmen being entitled to the same and similar service conditions should be given employment in regular service which benefit has already been extended to their co-workers numbering 37.

Dictated and corrected by me.

R. K. DASH, Presiding Officer

नई दिल्ली, 8 अप्रैल, 1992

का. आ. 1188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. जी. एस. मिश्रा एण्ड पार्टनर, बारबिल के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/4/92 को प्राप्त हुआ था।

[संख्या एल—27011/6/88—डी-III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 8th April, 1992

S.O. 1188.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Orissa, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. G. S. Mishra & Partner, Barbil and their workmen, which was received by the Central Government on the 8-4-92.

[No. L. 27011/6/88-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR
PRESENT :

Sri R. K. Dash, LL.B.,
Presiding Officer,
Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 6 OF 1989 (CENTRAL)
Dated, Bhubaneswar, the 26th March, 1992.

BETWEEN :

The Management of M/s. G. S. Mishra & Partner, Contractor of M/s. O.M.D.C. Ltd., Barbil.—First Party-management.

AND

Their workmen represented through Barbil Workers Union, P.O. Bolani, District Keonjhar.—Second Party-workmen.

APPEARANCES :

Sri G. S. Mishra, Partner—For the first party-management.

Sri R. M. Latif, Secretary, Barbil Workers Union.—For the second party-workmen.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to

as the 'Act') and by their Order No. L-27011/6/88-D.III(B) dated 22nd February, 1989 have referred the following dispute for adjudication by this Tribunal :—

“Whether the demand of Barbil Workers' Union Bolani on the management of M/s. G. S. Mishra & Partner, Barbil for payment of same wages and provision of similar conditions of service to the contract workers as applicable to the similarly placed departmental workers is justified? If so, what relief are the concerned workmen entitled to?”

2. The pith and substance of the case of the workmen represented through Barbil Workers' Union (for short 'Union') is that M/s. G. S. Mishra & Partners being a contractor has taken-up contract work in the Manganese Mines of the principal employer, namely, Orissa Mineral Development Corporation (for short 'O.M.D.C.') since 2-7-86. The present workmen have been engaged by the said contractor to work in the mines. The principal employer has about 1000 workers under it who are engaged directly to work in other mines. They are being paid higher wages whereas the wages paid to the workmen by the contractor for doing the same and similar work is comparatively low. So, it is urged that M/s. G. S. Mishra & Partners be directed to pay equal wages as is being paid to their counterparts working directly under the principal employer.

3. The case of the management of M/s. G. S. Mishra & Partners on the other hand is that the present case is not legally maintainable because of the fact that there existed no dispute between the workmen and the management. No claim what-so-ever was put-forth by the workmen claiming equal wages as is being paid to their counterparts engaged directly by the principal employer. Only during the conciliation proceeding initiated by the Asst. Labour Commissioner (Central), Rourkela one Mr. R. M. Latif raised his voice for payment of equal wages to the workmen. But earlier to such conciliation no demand for equal wages was at all made either by the workmen or anybody on their behalf. This apart, Mr. Latif who was taking part in the conciliation proceeding had no locus-standi to represent the workman because he was not the Secretary of the Union. To assert his leadership, he filed a suit in the Court of Munsif, Champua for a declaration that he had been elected as the Secretary of the Union. In that suit he prayed for injunction restraining the former President and the Asst. Secretary from interfering with his union activities. On a consideration of the documents, the Munsif rejected the prayer observing that there was no material to show that Mr. Latif is the elected Secretary of the Union. In addition thereto the Registrar of Trade Unions, Orissa intimated the General Manager, O.M.D.C. that in view of the civil court findings no further clarification regarding the claim of Mr. Latif as Secretary of the Union was necessary. In the conciliation proceeding O.M.D.C. also took the stand that in view of the Civil Court findings, Mr. Latif has no locus-standi to represent the Union or raise any industrial dispute. Despite of such objection, the conciliation proceeding was allowed to continue and before conclusion of the proceeding the present reference was made by the Government to decide the dispute. It is no doubt true that the appropriate Government has power to make reference for adjudication of a 'dispute' but for exercising such power there must be materials before it to show prima-facie that there exists any real dispute between the parties. In the present case there was no material to satisfy the Central Government that the workmen working under the management had any dispute with regard to the quantum of wages and therefore, the reference is not legally tenable.

As regards the factual aspects of the case are concerned, it is urged by the management that O.M.D.C. Ltd., Barbil is the principal employer of Roida Mines which is otherwise known as Bhadrāsahi Manganese Mines whereas M/s. Bharat Process & Mechanical Engineers Ltd. (for short 'B.P.M.E. Ltd.') is the principal employer of Thakurani Mines. These two mines are situated at 20 Kms. apart. The nature of mining work in both the mines are also different. In Thakurani Mines the soil is soft and the ore is of low grade whereas in Roida mines the soil is very hard and quality of ore is of high grade. Besides, winning of the ore in Roida Mines involves more lead and lift and collection is very less in comparison to that of Thakurani Mines. In so far as the wages is concern-

ed, on account of greater lead and lift and other factors the rate of wages in Roida Mines is although more but the total pay packet of the workers is comparatively less than what is being paid to the workers of Thakurani Mines. Due to softness of the ore the workers of Thakurani Mines are able to extract more materials and earn more whereas workers of Roida Mines are unable to earn equal of them for the reason stated above. Under the settlement arrived at between the management of O. M. D. C. Ltd. and their workmen of Bhadrasahi Mines, Roida represented by Roida wings of Barbil Worker's Union, different rates of wages are fixed for the workers considering the extra efforts they are put due to excessive lead and lift in the work and also for low recovery of ores. As different considerations weighed with the management for restructuring the wage rates, both parties agreed that the settlement made in that regard shall not be applicable to other mines. This apart, there are other mines in the neighbouring area owned by O. M. C. Ltd. where wages are being paid in different rates depending upon the grade of ore, lead and lift etc. In the circumstances, therefore, the principle of 'equal wages for equal work' can not be made applicable to the workmen working in Thakurani mines.

Apart from what has been stated above, another stand has been taken by the management challenging the maintainability of the present proceeding. It is urged that the Desk Officer of the Ministry of Labour, Government of India under his letter dated 1-7-87 intimated the Deputy General Manager, Rolani Ore Mines that Mr. R. M. Latif being not the duly elected Secretary of the Union has no locus-standi to raise any industrial dispute or serve any strike notice or present case of the workers before the management. This also finds support from the letter of the Registrar, Trade Unions addressed to the General Manager that in view of the Civil Court finding rejecting the claim of leadership of Mr. Latif, no further clarification was necessary. It is further pleaded that from the very beginning the Management took the stand before the Conciliation Officer that Mr. Latif was not legally entitled to represent the cause of the workers because all the workers and the staff working under the Management being the members of the Barbil Mazdoor Sangha (for short 'Sangha') and not of the Union he had no locus-standi to raise any dispute. However, these objections were not taken into consideration by the very same Officer, namely, B. K. Sharma who made this reference although he in his earlier letter categorically mentioned that Mr. Latif having no locus-standi was not entitled to raise the dispute.

4. In view of the pleadings of the parties, the following questions that emerge for decision are as under :—

- (1) Whether there was any demand on the management by the workers either through the Union or through the Sangha claiming equal wages for equal work and other service conditions which ultimately gave rise to the present reference ?
- (2) Whether both Union and Mr. R. M. Latif describing him as the Secretary of the Union are legally entitled to raise the dispute and contest the present proceeding on behalf of the workers ?
- (3) Whether the workers engaged by M/s. G. S. Mishra & Partners, Barbil are entitled for equal wages and similar service conditions as applicable to the workers doing the same and similar job ?

Of all those questions formulated above, I shall first take-up the questions Nos. 1 and 2 simultaneously for determination as the same affect the very maintainability of the proceeding. It is also observed by the Hon'ble High Court in O. J. C. No. 2060 of 1989 which arose out of the order dated 18-5-89 of this Tribunal that the question of maintainability if raised by the management shall be considered first before proceeding to the other issues.

5. The consistent case of the management is that no demand was ever made by the workers claiming 'equal pay for equal work' and other service conditions. It is Mr. Latif who posing himself as the Secretary of the Union got the present reference made by the Central Govt. which is not legally maintainable. It is further pleaded by the management that the workers working in Thakurani mines are the members of the Sangha and the Union being not their representative can not legally espouse their cause and fight out the present case.

'Industrial dispute' defined in Section 2(k) of the Act means, any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour, of any person. So, existence of a dispute is a condition precedent of exercising jurisdiction by the appropriate Government under section 10 of the Act for making an order of reference. This is also the view of the Apex Court in case of *Sindhu Re-settlement Corporation Vrs. Industrial Tribunal, Gujarat*, reported in A.I.R. 1968 S. C. 529, the relevant portion of which is extracted here-under :—

"Since no such dispute about reinstatement was raised by either of the respondents before the management of the appellant, it is clear that the State Government was not competent to refer a question of reinstatement as an industrial dispute for adjudication by the Tribunal. * * * * *

A mere demand to a Government without dispute being raised by the workmen with their employer, can not become an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute as was purported to be referred by the State Government to the Tribunal had ever existed between the appellant Corporation had ever existed between the appellant Government, in making a reference, obviously committed an error in basing its opinion of material which was not relevant to the formation of opinion * * * * *

The aforesaid dictum of the Hon'ble Supreme Court has been consistently followed by other High Courts. The Lordships of the Delhi High Court in the case of *Fedders Lloyd Corporation (Pvt.) Ltd., Petitioner V. Lt. Governor, Delhi through Under Secretary (Labour), Delhi and others, Respondents*, reported in A.I.R. 1970 Delhi Page 60 have equally held that demand by the workman must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist. That was a case where according to the management the concerned workman who was employed as a Security Officer was relieved of his duties on submitting resignation. Some ex-gratia payment was made to him which is generally paid to the workers who are retrenched from service. He accepted the payment and gave a receipt in full and final settlement of his claims. Subsequently, he wrote a letter to the Labour Commissioner, Delhi stating that an industrial dispute existed between him and the management and it is expedient that the matter specified in the enclosed statement should be referred to industrial adjudication. In the said statement it was stated that his services were terminated by way of retrenchment and the said retrenchment was wrongful and arbitrary.

The management could come to know the above only when a notice was received by it from the Conciliation Officer. The claim of the workman was resisted during conciliation proceeding on the ground that there was no industrial dispute between the parties. Relying upon the decisions of the Apex Court (supra) it was held by their Lordships that no demand regarding reinstatement was ever made by the workman and therefore, there existed no industrial dispute between the parties. To the same effect is the view of the Allahabad High Court, reported in 976 (33) I. F. L. R. Page 43 (*M/s. Star Paper Mills Ltd. Vrs. Industrial Tribunal and others*).

From all the aforesaid judicial pronouncements what I gather is that first there must be demand on the management by the aggrieved worker and only after the refusal of the management to accept the same, the matter can be referred to for conciliation. In the present case, the management from the very beginning has taken the stand in para-5 of its first written statement that no demand for payment of equal wages and for making provision of similar service conditions as applicable to the similarly placed departmental workers was ever made by the Union prior to the initiation of the conciliation proceeding. This being the stand of the management it was obligatory on the part of the Union to lead evidence to show if at all the demands as aforesaid were made on the management. The Union in the present pro-

ceeding though has examined two witnesses but both of them do not whisper a word about making any such demand to the management. So, having taken into consideration of the pleadings coupled with evidence, I am of the opinion that before the dispute was taken up in the conciliation proceeding no demand was made to the management by the workers or the Union claiming payment of equal wages and for making similar service conditions as have been provided to the similarly placed departmental workers. So, there having no demand by the workers themselves or through their Union or Sangha, as the case may be, it cannot be said that there existed any industrial dispute between the parties and in this view of the matter the Government of India was incompetent to make the reference.

6. The next question that emerges for consideration is as to whether the Union or Mr. R. M. Latif, describing himself as the Secretary of the Union, could raise the dispute and contest the present proceeding on behalf of the workers.

From the materials available on record, I find that fighting between the so-called labour leaders began in 1986. Mr. R. M. Latif claimed himself as the Secretary of the Union but his leadership was not accepted or recognised by the other leaders as well as the workers. Ultimately, Mr. Latif approached the Civil Court and filed a suit bearing Title Suit No. 22 of 1986 for a declaration that he was the elected Secretary of the Union. He also prayed for an injunction restraining the defendants therein from interfering with his union works. Reference can be made to the judgment passed by the learned District Judge, Keonjhar in Misc. Appeal No. 4 of 1987 against the orders passed in three M. J. Cs. arising out of the aforesaid T. S. No. 22 of 1986. The said judgment though has not been marked exhibit by the management who filed the same alongwith its written statement but it being a public document can be referred to. On going through various documents, the learned District Judge came to hold that Mr. Latif failed to satisfy that he being the Secretary of the Union could maintain the suit. One of the documents which found favour with the Court was a letter of the Government of India in the Ministry of Labour under which the General Manager, Bolani Ore Mines was intimated that Mr. Latif being not the Secretary of the Union had no locus-standi to raise any dispute and serve any strike notice.

Apart from the Civil Court's findings referred to above, evidence is available to show that the Union does not exist and all the workers of Thakurani Mines are the members of the Sangha. Witness No. 2 for the management is a workman working in the mines under the first party-management. He speaks that there are 400 workmen working in Thakurani Mines under the first party-management and all of them are members of the Sangha. He also speaks that except that Sangha there is no other recognised Union functioning in the mines. This evidence of his also finds corroboration from the evidence of management witness No. 4. While cross-examining him, it could be elicited that one Bhagawan Rana is the General Secretary of the Sangha which is a recognised union operating in Thakurani Mines. Though workman witness No. 2 would say in his evidence that he is a member of the Union but I am not inclined to put reliance on his testimony for the reason that the very existence of the Union in the mines could not be proved. This apart, the relevant entry at Sl. No. 234 of Ext. D as well as Sl. No. 278 of Ext. E, two membership registers for the year 1987 and 1988, the genuineness of which has not been disputed, would show that he is a member of the Sangha.

From the aforesaid evidence the only irresistible conclusion would be that the Union is no more in existence and all the workers working in Thakurani Mines have been enrolled as members of the Sangha.

7. It is pleaded by the first party-management that before the Assistant Labour Commissioner (Central), who initiated the conciliation proceeding a demand was made by Mr. Latif posing him to be the Secretary of the Union for equal wages for equal work. Section 12(1) of the Act envisages that only when there exists an industrial dispute or such dispute is apprehended the Conciliation Officer shall hold a conciliation proceeding in the manner prescribed. Mr. Latif being not entitled to espouse or sponsor the dispute the Conciliation Officer should not have admitted any dispute raised by him for conciliation, particularly when there are materials to show

that the union of which he claims to be the Secretary is no more in existence. In the present proceeding also he is not entitled to represent the workers as because he is neither a member of the Executive nor office bearer of any other registered Trade Union. From the pleadings coupled with the evidence, what transpires is that the workers working in Thakurani Mines under the first party-management had no grievance against the management about their wages and it is only Mr. Latif who asserted his leadership as Secretary of the Union which is no more in existence and got this reference made for oblique motive.

8. Coming to the merit of the claim it is to be seen as to whether the workers working in Thakurani Mines under the first party-management are entitled to equal wages and similar service conditions as are applicable to the workers doing the same and similar job.

There is no dispute about the proposition of law that 'equal pay for equal work' though is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principle of State Policy as contained in Article 39(d) of the Constitution. 'Equal pay for equal work' has assumed the status of fundamental right in service jurisprudence having regard to the Constitutional mandate of equality in Articles 14 and 16 of the Constitution. While considering the question of equal pay for equal work, it is not necessary to find out similarity by mathematics formula but there must be reasonable similarity in the nature of work performed by the workers. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less—it varies from nature and culture of employment.

In the present case there are materials to show that the working conditions of the workers in Thakurani Mines are not similar to that of the workers working in Roida Mines. The memorandum of settlements Exts. A&B arrived at between the management of O.M.D.C. Ltd. and their workmen of Roida Mines would show that different considerations weighed with the management to pay higher wages to its workers. It is pertinent to reproduce the relevant paragraph of the settlement under:—

"(A) The rates, it is agreed only for Bhadrāsahi Mines considering that work has to be concentrated in high grade manganese ore working an dextra efforts by workers are necessary due to excessive lead and lift in the workings and also due to low recovery. The rates fixed, it is agreed, will not be applicable to other mines under the management."

9. A close scrutiny of the ocular testimony of the workmen witnesses would show that there is absolutely no evidence that nature and quality of work both in Thakurani Mines and Bhadrāsahi Mines are the same and similar. Rather, the documentary evidence referred to above indicates that work done by the workers of Bhadrāsahi Mines is more strenuous. In the circumstances, I would therefore, hold that the workers of Thakurani Mines are not entitled to equal wages for equal work and other service conditions, if any.

The reference is answered accordingly.

R. K. DASH, Presiding Officer

नई दिल्ली 8 अप्रैल, 1992

का.आ. 1189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का) की धारा 17 के अनुसरण में केन्द्रीय सरकार, में, डब्ल्यू. एच. डी. 'फ़ूज एण्ड सन्स, स्टीवीडोरम, कोकीन पोर्ट कोचीन के प्रबन्धतंत्र के संबंध नियमों और उनके कर्म-कारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कम लेबर कोर्ट, एन्नाकुलम के पंचाट को प्रकाशित करती करती है, जो केन्द्रीय सरकार की 8/4/92 को प्राप्त हुआ था।

[संख्या एन—35(12/3/87-डी-III (बी))]

प्रति: स. रेविड, हेमक प्राधिकारी

New Delhi, the 8th April, 1992

S.O. 1189.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. W.H.D. Cruz and Sons, Stevedores, Cochin Port, Cochin and their workmen, which was received by the Central Government on the 8-4-1992.

[No. L. 35012/3/88-D.III(B)]
B. M. DAVID, Desk Officer

**ANNEXURE
IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM**

(Tuesday, the 31st day of March, 1992)

PRESENT :

Shri Raveendran, B.A., B.L., Presiding Officer.

Industrial Dispute No. 12 of 1988 (C)

BETWEEN

M/s. W.H.D. Cruz and Sons, Stevedores and Terminal Contractors, XLV/394, 1st Floor, Opposite Ernakulam Wharf, Main Gate, Wellington Island, Cochin-682003, Kerala.

AND

Shri M. E. Thomas, behind Micro Wave Station, Deshabhimani Road, Kaloore, Ernakulam, Cochin-682017, Kerala.

REPRESENTATIONS :

Sri M. V. Joseph, Advocate,
Iyyattil Road, Cochin-11. For Management

Sri P. Suresh, Advocate,
Cochin-16. ...For Workman

AWARD

"Whether the action of the Management of M/s. W.H.D. Cruz & Sons, Stevedores, Cochin Port, Cochin in terminating the services of Shri M. E. Thomas, Accountant w.e.f. 21-4-88 is justified? If not, what relief is the workman entitled to?" is the issue referred for adjudication to this Court as per the order No. 35012/3/88-D.III(B), dated 21-12-1988 of Government of India.

2. The workman has filed claim statement stating as follows:—

Mr. M. E. Thomas, the employee joined the employer on 2-9-74 as an Accountant. The employee was given the work of preparation of final accounts and concerned work. The working hours of the employee was from 10 a.m. to 1 p.m. and the salary was fixed on the basis of the working hours. Since joining the establishment the employee alone is the sole Accountant. There was no other accountant in the establishment till 1985. The employee has been attending the office regularly and discharging the work satisfactorily till this day. No complaint or any dissatisfaction about the work was expressed by the employer till this day. The employee was full time employee in the establishment with the working hours from 10 to 1 p.m. Never before any categorisation as a part time employee was designated to the employee. On 21-4-88 the employee was given notice of retrenchment and employee is retrenched from the establishment. The action initiated by the employer under the guise of retrenchment is nothing but a punishment inflicted by way of disciplinary action. The employer has not complied with provisions of sections 25(F), 25(G) of Industrial Disputes Act. The action of the establishment is nothing but victimisation and harassment. The action is illegal, improper and irregular and invalid. The action is arbitrary and unjustifiable. The action taken by the establishment is against equity, justice, good conscience and principles of natural justice. The action is vitiated by mala fides. The management on 11-2-87 addressed the employee that working hours in the office is from 9 a.m. to 4.30 p.m. and failure to attend the office

during the working hours will invite disciplinary proceedings. The employee on 14-2-87 addressed the management and placed before the management the explanation. The management was not satisfied with the explanation and addressed another letter to the employee on 19-2-87. On 27-2-87 the employee was given a charge sheet by the management. The employee gave reply to the charge sheet on 1-3-87. On 3-3-87 an enquiry notice was served on the employee. Thereafter a Domestic Enquiry was conducted by the management. In the domestic enquiry the management examined three witnesses namely Mr. M. J. Fernandez, Mr. James Isaac and Mr. John D'Coutho. The evidence of the witnesses is that the employee Mr. M. E. Thomas is the Accountant of the establishment that no complaint of dissatisfaction is there regarding the work of the employee. The employee was examined in Chief, and no cross-examination was done by the management, thereby admitting the case of the employee that he is the Accountant of the establishment with working hours 10 a.m. to 1 p.m. The enquiry was concluded and the decision of the enquiry officer was never informed to the employee. Thereafter on 11-1-88 the employee was informed by the management that even though the enquiry officer had found the employee guilty of the charges, the management is taking a lenient view and dropping action of this count and treat the issue as closed. The employee thanked the management for the action. The request for the Enquiry Report was turned down by the management. Ever since the employee joined the establishment, he was working as the Accountant. Employee was never given any designation or categorised as part time. The service records, registers maintained by different Labour Authorities will reveal that the employee is an Accountant in the establishment. It will be also seen from the salary certificate issued by the establishment that the employee has left behind him 25 more years of service for retirement. The establishment took an accountant in the year 1985. He was also dealing with accounts. He was the junior most and the employee was the seniormost. The employee received the monthly salary of January, 1988 on 30-1-88. It was found that increase in D.A. was not given to the employee. Ever since joining the establishment the employee was working from 10 a.m. to 1 p.m. and discharging his duties to the entire satisfaction of all concerned. The Management has never requested the employee to work from 9 a.m. to 4.30 p.m. The Management has not changed the service conditions. In the retrenchment notice the employee is categorised as a part time employee and person who joined the establishment in 1985 as an Accountant categorised as a full time Accountant. In the retrenchment notice it is stated that the service of a part time employee is not needed in the establishment, as there is a full time Accountant. It is also stated that the employee has become surplus. The reasons for retrenchment is that it is due to dearth of work in the establishment. The establishment also issued a cheque which was received under protest. The employee requested the establishment by letter dated 25-4-88 to reinstate the employee. All the acts done by the establishment are to victimise the employee. The establishment has to be directed to reinstate the employee forthwith, with full back wages and other benefits.

3. The Management has filed written statement contending as follows:—

Shri M. E. Thomas was engaged for preparation of final accounts only. Since the volume of work concerned preparation of final accounts was only for a few hours a day he was engaged for 3 hours a day namely from 11 a.m. to 1 p.m. The regular working hours of this establishment is from 9 a.m. to 4.30 p.m. Shri Thomas was the only person engaged by the establishment on part time basis. In the year 1985, the auditors of the establishment was changed. The auditors of the establishment since the year 1985 wanted preparation of agency wise accounts by the office of this employer. Thus the volume of work increased regarding accounts. Shri Thomas was asked to attend this increased work also. He was not prepared to do so as he was not interested in engaging himself from 9 a.m. to 4.30 p.m. The reason stated by him was that after 1 p.m. he was not free as he had to attend M/s. Thomas Associates in Ernakulam where he was a partner. Therefore this employer engaged Mr. John D'Coutho as a full time accountant. After some time the volume of business of the employer establishment diminished and the employer thought of retaining Shri Thomas as a full time accountant and retrenching Mr. John D'Coutho. So Shri

Thomas was asked to attend the full time work in the employer establishment. He refused to do so. So he was charge sheeted and a domestic enquiry was held. In the enquiry he participated. He was found guilty by the enquiry officer. However, the employer took a lenient view and disciplinary proceedings were dropped. Then the employer thought of retrenching the surplus part time accountant and proceeded for the same according to the provisions of I.D. Act, and Rules. Shri Thomas was having no case at any time that he was prepared to attend full time work had he been paid higher emoluments. The employee was retrenched as a part time employee has become surplus to the requirement of the employer. The employee was not victimised or harassed. In retrenching the employee no illegality was committed by the employer, nor was it vitiated with mala fides. The employee was attending only to part time accounting work. Had the employee agreed to work as a full time accountant he would have been allowed to continue and the accountant appointed in 1985 could have been retrenched. If Shri Thomas is prepared to work as a full time accountant the employer is prepared to take him back and retrenched Mr. John D'coutho.

4. The workman has filed replication reiterating his claims in the claim statement and refuting the contentions in the written statement.

5. The point that arise for consideration is whether the termination of service of Sri M. E. Thomas, Accountant with effect from 21-4-88 is justifiable. If not, what relief is entitled to?

6. For the management MW1 was examined. For the workman WW1 was examined and Exts. W1 to W9 were marked.

7. Point.—Shri M. E. Thomas, the workman was employed by the Management as an accountant with effect from 2-9-74 and working hours was from 10 a.m. to 1 p.m. He was the sole Accountant in the establishment, till 1985 and thereafter another accountant was also appointed by the management. But now his services were terminated with effect from 21-4-88 retaining the other accountant who was employed subsequently in 1985. Accordingly to the workman when his services were terminated the management did not comply with provisions of sections 25(F), 25(G) of the I.D. Act. He was a full time employee in the establishment with the working hours from 10 to 1 p.m. As the termination is illegal, he is to be reinstated in service with full back wages and attendant benefits. The management would contend that the workman was engaged for preparation of final accounts only and he was engaged for 3 hours a day namely from 10 a.m. to 1 p.m. Even though the regular working hours of this establishment is from 9 a.m. to 4.30 p.m., the workman was engaged in the establishment on part time basis. In 1985, the volume of work in the establishment was increased regarding accounts. Hence, Thomas was asked to attend this increased work also. He was not prepared to do so as he was not interested in engaging himself from 9 a.m. to 4.30 p.m. The reason stated by him was that after 1 p.m. he was not free as he had to attend M/s. Thomas Associates in Ernakulam where he was a partner. Therefore another employee by name John D'coutho was engaged as a full time accountant.

8. It is an admitted fact that M. E. Thomas was employed by the management as an Accountant with effect from 2-9-74. It is also an admitted fact that his working hours were from 10 a.m. to 1 p.m. It has come out in evidence that the working hours of the management establishment is 9 a.m. to 4.30 p.m. Therefore, according to the management the workman was only a part-time employee in the establishment and as a result of increase of volume of work in the establishment they appointed another person as a full time accountant in 1985 and as it is found that the volume work was reduced in the establishment and it was not necessary to continue the service of two accountants in the establishment, the service of the workman was terminated retaining the other accountant in service.

9. The workman was examined as WW1 who would depose in support of the averments in the claim statement. He would further depose that he was employed in the management establishment from 1974 and his working hours was from 10 a.m. to 1 p.m. He was only an accountant who was working there at that time. He was never part time employee in the establishment. Another accountant was also appointed

in 1985. He was not shown as part time accountant in any of the records kept by the management. He would further depose that he was ready to work from 9 a.m. to 4.30 p.m. if he was paid salary properly. He would further depose that he was not paid the retrenchment compensation or notice. He would depose in the cross-examination that working hours of the company was from 9 a.m. to 4.30 p.m. for all other employees and he alone was working from 10 a.m. to 1 p.m. and after 1 p.m. he was working in his firm wherein he is also one of the partners. He would further depose that he was never asked to do work from 9 a.m. to 4.30 p.m. by the management. The manager of the management establishment was examined as MW1 he would depose that the workman was only a part time Accountant in the establishment and he was working from 9 a.m. to 1 p.m. When he was asked to work from 9 a.m. to 4.30 p.m. which is the working hours of the establishment the worker was not prepared to do the work. Hence, in 1985 another accountant was appointed as full time Accountant. He has received the gratuity and Provident Fund amount. In the cross-examination, he would depose that he did not know whether the workman was employed for the working hours 10 a.m. to 1 p.m. He would further depose in the cross-examination that there is no records to show that the delinquent was categorised as part time employee. There is no evidence in this case to show that the workman was employed by the management as a part time Accountant, even though his working hours was from 10 a.m. to 1 p.m. It is also to be noted that he was the only Accountant in the establishment upto 1985. So also there is no satisfactory evidence in this case to show that he was asked by the management to work from 9 a.m. to 4.30 p.m. the working hours of the establishment. In these circumstances it has to be held that the terms of employment such as salary and other benefits were fixed taking into account the working hours 10 a.m. to 1 p.m. In the absence of any evidence to show he was appointed as part time accountant it is to be held that he was appointed as an Accountant in the establishment fixing the working hours from 10 a.m. to 1 p.m. It is also pertinent to note that no distinction is drawn in the definition of workman as defined in the I.D. Act as part time workman or full time workman. At any rate the employee will come within the ambit of the definition of workman as defined in the I.D. Act. It is also come out in evidence that the workman has acquired the right of employment by working more than 240 days in a year continuously and uninterruptedly. Therefore it is mandatory to comply with section 25F of the I.D. Act before his services were terminated or retrenched except the dismissal or removal which are for misconduct proved in a properly conducted domestic enquiry. Therefore the termination of the workman is illegal. It is also pertinent to note that in case the management find it difficult to continue the services of two accountants in the service of the establishment they should follow the rule of the last come first go as stipulated in section 25G of the I.D. Act. Hence, I find that the petitioner is entitled to reinstate in service with full back wages and other benefits as termination of service of the workman is invalid and unjustifiable. It is also to be noted that the management is ready to engage him in service if he prepared to work from 9 a.m. to 4.30 p.m. So also the workman is ready to work from 9 a.m. to 4.30 p.m. provided he was paid taking into consideration the working hours also because his payment was being made as per the terms of the appointment for the working hours fixed from 10 a.m. to 1 p.m. It has come out in evidence that the workman has received the amount due under the gratuity from the management. Therefore the workman has to repay the amount received under the gratuity to the management. In these circumstances, I find that termination of the service of the workman is illegal and unjustifiable. He is entitled to get reinstatement in service with full back wages and attendant benefits.

10. In the result, an award is passed setting aside the order of termination against the workman and directing the Management to reinstate him in service with full back wages, continuity of service and other benefits as he deemed to be in service.

Ernakulam,
31-3-1992.

R. RAVEENDRAN, Presiding Officer

APPENDIX

Witness examined on the side of Management :

MW1. Sri M. J. Fernandez.

Witness examined on the side of Workman :

WW1. Sri M. E. Thomas.

Exhibits marked on the side of workman :

Ext. W1.—Letter No. 25(3)/81-L/Ekm dated 23-12-81 from Labour Enforcement Officer (C) Ernakulam.

Ext. W2.—Salary Certificate dated 27-1-86 of the workman.

Ext. W3.—Photostat copy of certificate issued to workman.

Ext. W4.—Photostat of a letter dated 21-4-88 of the Management addressed to the workman.

Ext. W5.—Photostat of another letter dated 11-2-87 addressed to the workman.

Ext. W6.—Photostat Copy of letter dated 19-2-87 of the workman addressed to the Management.

Ext. W6(a).—Postal acknowledgement Card to the above letter.

Ext. W7.—Photostat copy of letter dated 19-12-87 of the Management addressed to the workman.

Ext. W7(a).—Postal acknowledgement card to the above letter.

Ext. W8.—Photostat copy of a letter dated 4-1-88 of the workman addressed to the Management.

Ext. W9.—Photostat copy of the Minutes of conciliation proceedings dated 29-9-88.

नई दिल्ली, 10 अप्रैल, 1992

का. आ. 1190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, कीरीबुरु आयर्न ओर प्रोजेक्ट के प्रबन्धन के संबंध में निदेशित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद को पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/4/92 को प्राप्त हुआ था।

[संख्या एल-26011/26/86--डी III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 10th April, 1992

S.O. 1190.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kiriburu Iron Ore Project and their workmen, which was received by the Central Government on the 8-4-92.

[No. L. 26011/26/86-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 262 of 1987

PARTIES :

Employers in relation to the management of Kiriburu Iron Ore Project and their workmen.

APPEARANCES :

On behalf of the workmen—Shri R. C. Rout, Authorised representative of the Union,

On behalf of the employers—Shri A. N. Chaudhury, Law Officer.

STATE : Bihar.

INDUSTRY : Iron Ore.

Dated, the 31st March, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-26011/26/85-D.III(B), dated the 21st September, 1987.

SCHEDULE

1. "Whether the management is justified in reducing the scale of pay and changing the designation of the Assistants promoted during 1-5-78 to 5-9-79? If not, to what relief the workmen are entitled?"

Demand Nos. 1 & 2.

2. "Whether the management is justified in not allowing the scale of pay of Rs. 750—1310 to the Assistant promoted to the post of Section Officer/ Sr. Accountant/Personal Asstt. without changing the service condition of public sector Iron & Steel Companies Restructuring and Miscellaneous Provisions Act, 1978? If not, to what relief the workmen are entitled?"

Demand No. 3

3. "Whether the Management is justified in not allowing the benefit of 2 additional increment to the Stenographer of Kiriburu Iron Ore Mine, a captive Mine of Bokaro Steel Plant on its roll on 15-11-83 but appointed prior to 1-5-78, before its take over in terms of tripartite settlement of 15-11-83? If not, to what relief the workmen are entitled?"

4. "Whether the Management is justified in prescribing probation after promotion in the absence of any such service condition applicable to the employees of Bokaro Steel Plant? If not, to what relief the workmen are entitled?"

2. In this case both the parties but only the workmen filed his W.S. Thereafter several adjournments were granted to the management for filling his W.S. Subsequently when the case was fixed both the parties appeared and submitted before me that the dispute in question have been resolved by mutual discussion and now there is no dispute existing. I heard both the parties and since there is no dispute existing between the parties I am constrained to pass 'No dispute' Award.

B. RAM, Presiding Officer

नई दिल्ली, 9 अप्रैल, 1992

का. आ. 1191.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जयपुरिया कजोरा यूनिट मधुजोरे कोलियरी आफ मैसर्स ई सी लि. के प्रबन्धन के संबंध में निदेशित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल को पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/92 को प्राप्त हुआ था।

[संख्या एल-22012/211/88--डी-IV (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1191.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of Jaipuria Kajora Unit of Madhujore Colliery of M/s. E.C. Ltd. of their workmen, which was received by the Central Government on the 6-4-92.

[No. L-22012/211/88-D-IV(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 31/89

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Jaipuria
Kajora Unit of Madhujore Colliery of M/s. E.C.
Ltd.

AND

Their workmen.

APPEARANCES :

For the Employers—None.

For the Workmen—Sri Bijoy Kumar, Joint Secretary of
the union.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 24-3-92

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by Clause (d) of sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(211)/88-D.IV.B dated the 30th June, 1989.

SCHEDULE

"Whether the action of the Management of Jaipuria Kajora Unit of Madhujore Colliery of M/s. E.C. Ltd. P.O. Dakhinkhanda, Dist. Burdwan (W.B.) in sending S/Sri Brahmedeo Thakur and 13 others as per Annexure-A, to the Age Determination Committee was called for and justified? If not, to what relief the workmen concerned are entitled?"

2. Today (24-3-92) Sri Bijoy Kumar, Joint Secretary of the Union submits that he has not received any information from his union and hence he does not like to proceed with the case.

3. In view of the circumstances, I have no other alternative but to pass a no-dispute award and accordingly a no dispute award is passed in this case.

Encls:—Annexure-A

N. K. SAHA, Presiding Officer

ANNEXURE-A

LIST OF THE WORKMEN

S/Shri

1. Brahmedeo Thakur
2. Chhatan Karmakar
3. Kaleshwar Roy
4. Sitaram Thakur
5. Nakul Thakur
6. Kishore Mali
7. Brishpati Thakur
8. Muneshwar Mahato
9. Bibhisan Thakur
10. Sakindar Roy
11. Chandreshwar Pandey
12. Mahesh Lohar
13. Ganesh Yadav
14. Daharu Gour.

नई दिल्ली, 9 अप्रैल, 1992

का. आ. 1192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार नार्थ सीयर सोल कोलियरी आफ मैसर्स ई सी लि. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण, आसंसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/4/92 को प्राप्त हुआ था।

[संख्या एल--22012/474/90--आई. आर (सी.-II)]

राजा लाल, डस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1192.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of North Searsole Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on the 8-4-1992.

[No. L-22012/474/90-IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 24/91

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of North
Searsole Colliery of M/s. E. C. Ltd.

AND

Their workmen.

APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.

For the Workmen—Sri Manoj Mukherjee, Advocate.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 24th March, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's letter No. L-22012(474)/90-IR(C.II) dated 19-4-91.

SCHEDULE

"Whether the action of the management of North Searsole Colliery of M/s. E.C.L., P.O. Searsole Rajbari, Dist. Burdwan, in dismissing Sri Badi Majhi, U/G Trammer workmen w.e.f. 27-6-85 and the following two others is justified? If not, to what relief are the concerned workmen entitled?"

1. Sri Narayan Bouri, Stone Cutter w.e.f. 31-7-85.

2. Sri Rabinath Majhi, Line Helper w.e.f. 25-4-86."

2. Today (24-3-92) Sri Manoj Mukherjee the learned Advocate for the union submits that he has no instruction from his client and hence he does not like to proceed with the case. The concerned workmen are also not present.

3. In view of the circumstances I have no other alternative but to pass a no-dispute award in this case and accordingly a no-dispute award is passed.

N. K. SAHA, Presiding Officer

नई दिल्ली, 9 अप्रैल, 1992

नई दिल्ली, 9 अप्रैल, 1992

का. भा. 1193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सौधर केन्डा कोलियरी आफ मैसर्स ई सी लि. के प्रबंधन के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/4/92 को प्राप्त हुआ था।

[संख्या एल—22012/71/90—आई प्रार (सं-11)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1193.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Lower Kenda Colliery of M/s. E.C. Ltd. of their workmen, which was received by the Central Government on the 6-4-1992.

[No. L-22012/71/90-IR(C-II)]

RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 33/90

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the Management of Lower Kenda Colliery of M/s. E.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers.—Sri P. K. Das, Advocate.

For the Workman.—Sri M. Mukherjee, Advocate.

INDUSTRY : Coal

STATE : West Bengal

Dated, the 23rd March, 1992

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(71)/90-IR(C.II) dated the 30th July, 1990.

SCHEDULE

“Whether the action of the Management of Lower Kenda Colliery of M/s. E.C. Ltd., P.O. Kenda, Distt. Burdwan in dismissing Shri Baidyanath Majhi, Underground Loader w.e.f. 4-11-1985 is justified? If not, to what relief is the concerned workman entitled?”

2. Today (23-3-1992) Sri M. Mukherjee the learned Lawyer representing the union submits that he has not received any instruction from his union.

3. In view of the circumstances, I have no other alternative but to pass a no dispute award in this case since the union is not interested to contest the case. Accordingly a no dispute award is passed in this case.

N. K. SAHA, Presiding Officer.

का. भा. 1194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लि. की वेस्ट मुद्दिह कोलियरी के प्रबंधन के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद को पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-1992 को प्राप्त हुआ था।

[संख्या एल—20012(194)/87-डी-3(ए)/आई प्रार (कोल-1)]

बी० के० वेणुगोपालन डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of West Mudidih Colliery of M/s. B.C.C. Ltd. and their workman, which was received by the Central Government on 3-4-1992.

[No. L-20012(194)/87-D.III(A)/IR (Coal-I)]

V. K. VENUGOPALAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 85 of 1989

PARTIES :

Employers in relation to the management of West Mudidih Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers.—Shri B. Joshi, Advocate.

For the Workmen.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 25th March, 1992

AWARD

By Order No. L-20012(194)/87-D.III(A)/IR (Coal-I), dated, the 19th July, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of West Mudidih Colliery of M/s. B.C.C. Ltd. in superannuating Shri Lakhi Narayan Modak, Haulage Operator w.e.f. 31-12-1985 when the age of the workman in his I. Card is 10-8-1937 is justified? If not, to what relief the workman concerned is entitled?”

2. The case of the management of West Mudidih Colliery of M/s. B.C.C. Ltd., as disclosed in the written statement-cum-rejoinder, is that Lakhi Narayan Modak, the concerned workman, was superannuated from service with effect from 31-12-1985 after he attained the age of 60 years which is the age fixed for superannuation. His age was recorded as 48 years in Form 'B' Register of the colliery and his date of appointment was recorded as 1-1-1987. Therefore his

date of birth would be 1-1-1925 and he completed 60 years of age on 31-12-1985. Form 'B' Register is a statutory document maintained in compliance with the provisions of Section 48 of the Mines Act. The concerned workman authenticated the entries made in Form 'B' Register after being satisfied with the same. The age recorded in Form 'B' Register became the basis of superannuation of a workman whatever may be his real age. Due to inadvertence the column for date of birth was not filled up in his Identity Card and he manipulated the documents to make out a case that his date of birth was 10-8-1937 and his superannuation is illegal. Anyway, he has accepted the entries in Form 'B' Register as correct, submitted his application for payment of gratuity and refund of C.M.P.F. accumulations. The present case has been initiated by some interested persons. In the circumstances, the management has prayed that its action in superannuating the concerned workman from service with effect from 31-12-1985 be held to be legal and justified.

3. The case of the concerned workman, as disclosed in the written statement submitted on his behalf by the sponsoring union, Bihar Colliery Kamgar Union, is that the concerned workman was working in West Mudidih Colliery for long. At the time of his appointment his date of birth was recorded by erstwhile employer in a statutory Form 'B' Register as 10-8-1937. On the basis of that record he was issued with Identity Card showing his date of birth as 10-8-1937. Identity Card is the only document issued by the management to a workman wherein the particulars of a workman are recorded from Form 'B' Register. Despite these facts the management illegally and arbitrarily superannuated him with effect from 31-12-1985. He vehemently protested against the illegal and arbitrary superannuation but without any effect. Seeing no other alternative the union raised an industrial dispute and the appropriate Government has referred the dispute for adjudication by this Tribunal.

4. In rejoinder to the written statement of the union, the management has stated that the concerned workman was inducted into employment of the colliery and was shown to have been appointed on 1-1-1973 at the age of 48 years which were recorded in Form 'B' Register of the colliery. It is absolutely false to allege that his age was recorded as 10-8-1937 in the Form 'B' Register. A workman is required to declare all his particulars at the time of entry in his service and to put his signature on L.T.I. at that time. During subsequent period of preparing Form 'B' Register for updating and consolidating or after change of management or ownership, all the details in old Form 'B' Register are copied and explained to the workman concerned and he puts his signature or L.T.I. against the entries in token of his having accepted the correctness of the same. The system of issuing Identity Card was introduced by the present management to minimise the malpractice of impersonation and fraud.

5. The parties arrayed have not laid any evidence oral or documentary to prove their respective cases.

6. The pleading of the sponsoring union discloses that the date of birth of the concerned workman was recorded as 10-8-1937 in the statutory Form 'B' Register of the colliery. The union could not prove this fact either by production of relevant Form 'B' Register through management or by any other evidence.

On the other hand, it is the specific case of the management that the concerned workman got into employment of the colliery on 1-1-1973 and that he disclosed his age as 48 years on the date of his appointment. This being so, his date of birth was 1-1-1925. In rejoinder to the written statement of the union, the management has firmly reiterated this fact, the union has not disputed this position by submitting any rejoinder to the written statement of the management. The management has further asserted that the concerned workman authenticated the entries in the Form 'B' Register after being satisfied. This fact has not been assailed by the sponsoring union.

Upon consideration of all these facts I come to the conclusion that the concerned workman disclosed his age as 48 years at the time of his entry in service on 1-1-1973 and therefore his date of birth was 1-1-1925.

7. There is hardly any dispute that the workmen of M/s. B.C.C. Ltd. reach the age of superannuation upon completion of 60 years of age. The date of birth of the concerned workman being 1-1-1925, the management has rightly superannuated him from service with effect from 31-12-1985.

7. The management has asserted that the concerned workman has accepted the position, submitted his application for payment of gratuity and refund of C.M.P.F. accumulations. This statement of fact has not been denied by the union. Hence, I come to the conclusion that the action of the management in superannuating the concerned workman from service with effect from 31-12-1985 is fully justified.

8. Accordingly, the following award is rendered the action of the management of West Mudidih Colliery of M/s. B.C.C. Ltd. in superannuating Shri Lakhi Narayan Modak, the concerned workman, from service with effect from 31-12-1985 is justified.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 9 अप्रैल, 1992

का. प्रा. 1195-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स भारत कोल्फिंग कोल लि. का मुनीडीह प्रोजेक्ट के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (गं 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-4-1992 को प्राप्त हुआ था।

[संख्या एल-20012(146)/91-आई. प्रार. (कोल-1)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Moonidih Project of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on 6-4-1992.

[No. L-20012(146)/91-IR (Coal-1)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 122 of 1991

PARTIES :

Employers in relation to the management of Moonidih Project of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—None.

For the Workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 30th March, 1992

AWARD

By Order No. L-20012(146)/91-I.R. (Coal-I), dated 'nil' the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Moonidih Project of M/s. B.C.C. Ltd., P.O. Moonidih, Distt, Dhanbad in dismissing Shri Ajodhya Pandey w.e.f. 12-9-90 from the services of the company is justified? If not, to what relief the workman is entitled?"

2. The order of reference was received in the office of this Tribunal on 5-12-91. The present industrial dispute was raised by the Secretary, Bihar Colliery Kamgar Union, Dhanbad.

Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union, appeared on 17-3-1992 and submitted that he would not take any further steps in the case and prayed that the same may be decided according to law. In the circumstances I am constrained to pass a 'no dispute' award in the present industrial dispute.

3. Accordingly, I pass a 'no dispute' award in the present industrial dispute.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 9 अप्रैल, 1992

का. आ. 1196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसेज भारत कॉफिंग कोल लि. की अंगारपाथरा कोलियरी के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-4-92 को प्राप्त हुआ था।

[संख्या एल—20012(166)/88 डी 3(ए)/डी 4 (ए)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Angarpathra Colliery of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on 6-4-1992.

[No. L-20012(166)/88-D.III (A)/D.IV (A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 31 of 1989

PARTIES :

Employers in relation to the management of Angarpathra Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri S. Bose, Secretary Rashtriya Colliery Mazdoor Sangh, Dhanbad.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 24th March, 1992

AWARD

By Order No. L-20012/166/88-D.III (A)/D.IV (A), dated, the 10th March, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Angarpathra Colliery of M/s. B.C.C. Ltd., Dhanbad, in dismissing the services of Shri B. N. Singh, Pay Clerk of the said Colliery is justified? If not, to what relief is the workman entitled?"

2. The case of the management of Angarpathra Colliery, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The present reference is not maintainable. B. N. Singh, the concerned workman, was working as Pay Clerk during the period from 1983 to 1986 at Angarpathra Colliery. He committed serious misconducts under Clauses 17(1)(a) and 17(1)(q) of the Model Standing Orders applicable to the Industrial Establishment in Coal Mines in respect of payment of LTC and LLTC for the block years 1983-1986 by causing manipulation of documents and thereby causing financial loss to the company and financial gain to himself apart from cheating innocent workman. As per provision of Coal Wage Board Recommendations, a workman was entitled to get railway fare for travelling to his home and returning from his home on earned leave once in a year. He was entitled to 2nd Class or 1st Class railway fare depending on the basic salary he was drawing according to limits fixed under N.C.W.A. II effective from 1-1-79. A workman is allowed to select any year during a Block year of 4 years for availing Leave Travel Concession (LTC) for travelling to any part of India alongwith the members of his family. Thus in a Block of 4 years a workman is entitled for LTC in one year and for the rest three years he is entitled for travel concession to himself. Under NCWA-III effective from 1-1-83, a workman became entitled to opt for availing railway fare for going to his home alone once in a year for three years in a Block of four years or once in three years for himself and his family members in a Block of four years. A register for payment of L.T.C. is required to be maintained in blocks of 4 years and proper account of billing and payments have to be recorded. The concerned workman and T. P. Singh used ingenuity and manipulated the records and showed to have paid excess money during the block years 1983-86 and caused huge loss to the company. In the course of checking of the records by a team of Internal Audits, it was observed that Rs. 30,594.00 was paid in excess by showing payments of LTC and LLTC twice to workmen during the block years of 1983-86 in place of once to which they were entitled to. Some workmen entitled to 2nd Class train fare were shown to have been paid 1st Class train fare and excess amount of Rs. 15,518.00 were withdrawn from the company. Excess amount has been shown in accounting and the said amount was misappropriated. Some amounts were shown to have been paid to fictitious persons. Accordingly, a chargesheet dated 6-9-86 was issued to the concerned workman calling explanation from him and simultaneously he was kept under suspension pending enquiry. The concerned workman submitted his reply dated 19-9-86 to the chargesheet. He stated in his reply that he had worked for 11 years for Pay Clerk and paid the amounts to work-

men correctly and the charges were levelled against him on the basis of incorrect information. Thus, his defence was pure and simple of denial of existence of facts contained in the chargesheet and the Audit Report which formed part of the chargesheet. The management held departmental enquiry by appointing Enquiry Officer and Presenting Officer. The concerned workman participated in the enquiry which was held in accordance with the principles of natural justice. The Enquiry Officer submitted his report holding the concerned workman guilty of the charges levelled against him. The competent authority examined the enquiry report, the enquiry proceedings and all other relevant papers and approved of the dismissal of the concerned workman from service. Accordingly, he was dismissed from service by letter dated 20/21-7-87 issued by the General Manager of the Area, who was also the Chief Mining Engineer of the Area. He was competent to dismiss the concerned workman from service.

3. The case of the concerned workman as per written statement submitted on his behalf by the sponsoring union, Rashtriya Colliery Mazdoor Sangh, briefly stated, is as follows :

The concerned workman joined the service in October, 1971 at Gazlitand Colliery in the post of Bonus Clerk and thereafter since August, 1974 he was working in Angarpathra Colliery without change of his designation as Bonus Clerk. M/s. B.C.C. Ltd. reorganised administrative pattern and Angarpathra Colliery falls within Katras Area No. IV. The administrative control of Collieries is done by the Colliery Manager and he alone has statutory power with regard to the employed persons of the Colliery as well as execution of provisions of Standing Orders and other service conditions. The concerned workman was a permanent employee of M/s. B.C.C. Ltd. and was having a very good service record. As a result, though posted as Bonus Clerk he was called upon by the Colliery administration to assist work of other section whenever such contingency arose. He used to comply with such direction of the Colliery administration. In September, 1986 he was served with a chargesheet dated 6-9-86 under the signature of the General Manager, Katras Area, describing him as Pay Clerk which he was not as he was Bonus Clerk of the Colliery. Despite of the fact chargesheet was issued under the signature of the General Manager, Katras Area, which was not proper and legal and though he was mentioned as Pay Clerk which he was not, he submitted his reply dated 19-9-86 denying the allegation of the chargesheet for the sake of good conduct and observance of discipline. The General Manager decided to hold departmental enquiry along with another workman who was issued separate chargesheet. The concerned workman decided to attend the departmental enquiry being a disciplined staff and he attended the enquiry which was just an empty formality. Thereafter by a letter dated 20/21-7-87 the same General Manager dismissed him from service. The same Officer who had issued the illegal chargesheet and organized an illegal so-called departmental enquiry had issued the letter of dismissal with malafide intention to shield some other persons and to make him just scape-goat. In the circumstances, the union has prayed that an award be passed directing the management to reinstate the concerned workman in service with full back wages.

4. In rejoinder to the written statement of the sponsoring union, the management has denied that the concerned workman was maintaining good record of service. He was working as Pay Clerk for the last 11 years irrespective of his designation. It has been denied that the domestic enquiry was an empty formality or that the departmental enquiry and subsequent dismissal of the concerned workman from service was illegal.

5. In rejoinder to the written statement of the management, the union has reiterated that the domestic enquiry was held illegally and that the order of dismissal of the concerned workman from service was passed illegally. The union has alleged that the management prepared some

illegal documents under instruction from some interested persons in order to harass the concerned workman and the entire process of enquiry was engineered by the officers to escape from their own illegal action.

6. At the instance of the management the propriety and fairness of the domestic enquiry was considered as preliminary issue.

In the course of hearing on preliminary issue the management examined Suredra Narain Sinha E.O. as MW-1 and laid in evidence a number of documents which have been marked Exts. M-1 to M-8.

On the other hand, the union has laid in evidence one item of document which has been marked Ext. W-1.

7. The pleading of the sponsoring union indicates that B. N. Singh, the concerned workman, joined the service of Gazlitand Colliery in October, 1971 in the post of Bonus Clerk. This statement of fact has not been denied by the management either in its pleading or by evidence. The pleading of the union further indicates that he was transferred to Angarpathra Colliery in August, 1974 without change of his designation.

The statements of facts in the pleading of the union indicate that though posted as Bonus Clerk, the concerned workman used to assist the work of other sections whenever he was called upon to do so by the management and that in September, 1986 a chargesheet was issued to him describing him as Pay Clerk which he was not as he was the permanent Bonus Clerk of the Colliery. The management has taken the stand that since the concerned workman was working for the last 11 years prior to issuance of chargesheet as Pay Clerk, he was described as such in the chargesheet. Even so, the management could have described him as Bonus Clerk working as Pay Clerk in the chargesheet. But this technical nuance does not reflect upon the heart of the case of the parties arrayed.

8. The concerned workman also did not take the defence of his being described wrongly as Pay Clerk in the reply to the chargesheet.

9. Anyway, it appears from the report of the Enquiry Officer that Sri R. N. Singh, Adviser (Security) informed the Chairman-cum-Managing Director of M/s. BCCL by confidential note dated 24-2-86 that some bunglings were going on in the disbursement of LLTC in Angarpathra Colliery under Area No. IV and that the Chairman-cum-Managing Director after receiving the report advised the Director (Finance) to depute an Internal Audit Team to enquire into the matter and report. Accordingly, Sri M. P. Singh, Sr. Finance Officer and Sri D. N. Mondal held audit and Sri S. R. Singh, Chief Internal Auditor, submitted report with regard to serious irregularities relating to LLTC and LTC accounts of Angarpathra Colliery. In Para 'F' of the Report Sri Singh complained that the concerned workman and T. P. Singh had done some manipulations and mal-practice in LLTC Register. Again Sri Singh has complained in Para 'J' of his report that it was observed in some cases that payments had not been made to the employees for whom bills were drawn. One such specific instance has been cited and according to Sri Singh this manipulation was done by the concerned workman.

Upon receipt of this report the management issued the following chargesheet dated 6-9-86 (Ext. M-1) against the concerned workman, an extract of which are re-produced hereinbelow :

"I hereby require you to state as to why disciplinary action should not be taken against you under S.O. 17 of the Model Standing Orders as applicable to Industrial Establishments in Coal Mines by which you are governed on account of the following charges read with the attached copy of the report of Shri S. R. Singh, Chief (IAD). These charges relate to the period when you were working in Angarpathra Colliery during the years 1983 to 1986 in connection with the work relating inter-alia to processing of documents relating to payment of LLTC and LTC to the workers of Angarpathra Colliery and disbursement of payments to them.

- (1) That as stated in the para (f) of the above report of Sri S. R. Singh, Chief (IAD), after getting the signature of the Personnel Officer as well as Manager/Agent in the LLTC and LTC bills some additional names were included by you and Shri T. P. Singh, L.T.C. Clerk as stated in the said para (f) with fraudulent and dishonest intentions and thereby you committed forgery. These acts have been committed by you along with Shri T. P. Singh, L.T.C. Clerk, Angarpathra Colliery.
- (2) That as stated in para (j) of the above report of Shri S. R. Singh, Chief (IAD), LLTC/LTC payments have not been made to the employees in whose name the bills have been drawn and the amounts shown in the bills have been defalcated/embazzled by you and Shri T. P. Singh, L.T.C. Clerk. One specific example is that of Shri Bhola Kamar, Blacksmith as stated in para (j) of the report of Chief (IAD) as referred to above.

If the above charges are proved the same would constitute misconduct within the meaning of the following clauses of S.O. 17(i) of the aforesaid Standing Orders :—

- (a) Theft, fraud or dishonesty in connection with the Employer's business or property.
- (b) Any breach of the Mines Act, 1952 or any other Act or any other rules, regulations or bye-laws thereunder or of any Standing Orders. (Indian Penal Code (I.P.C.) is one of the Acts referred to in this Clause and fraud, dishonesty, misappropriation and embezzlement of funds of employer's forgery etc. all fall within the scope of that Act.)

The concerned workman submitted his reply to the chargesheet specifically denying that during the years 1983—86 he added certain names in LLTC and LTC bills after signature of Personnel Officer and the Manager/Agent of Angarpathra Colliery were obtained. He also denied the charge of non-payment to any of the employees whose names were on the bills. An extract of his reply to the chargesheet is gleaned hereinbelow :

(Ext. M-2) :—

- “(1) That the charges levelled against me are not based on correct information and hence those are not admitted by me.
- (2) That it is not correct to suggest that in any LLTC and LTC bills during the year 1983 to 1986 was added with additional names after signature of P.O. and Manager/Agent of Angarpathra Colliery.
- (3) That the charges of non-payments to the employees whose names were on the bills are not correct since payments have been correctly made to all named persons and it is similarly not correct that payment shown to have been made to Shri Bhola Kamar has not been made. It will be mentioned here that Shri Bhola Kamar has already given in writing that he did receive the payment.
- (4) That it may be mentioned here that none of the concerned workmen have made any grievance about non-receipt of their due payments.
- (5) That it is submitted, that I am unable to explain as to how Shri S. R. Singh, Chief (IAD) had made his investigation which might have been done behind my back, I am not in a position to clarify that statement mentioned in the Chargesheet.
- (6) That I am serving for last 15 years under the Company out of which since 11 years as Pay Clerk in Angarpathra Colliery with a clean record of service.”

10. The report of Sri S. R. Singh in Para ‘F’ reads as follows :

“In LLTC bill it was seen that after getting the signature of Personnel Officer as well as the Manager/Agent some names were included. Such cases have

been noticed in the following pages of LLTC register :

- 80% payment register—Page No. 18, 50, 53, 57, 60, 65, 66, 95, 101, 107, 111 and 115.
- 20% payment register—Page No. 6, 80, 91 and 102.
- 80% LTC register—Page No. 42, 48, 53, 59, 65 and 70.

This shows that Manager/Agent did not bother to see the bill register while signing the Pay orders and Sri T. P. Singh and B. N. Singh were given free hand to do any manipulation and mal-practice.”

From the report it appears that T. P. Singh and the concerned workman did some manipulation and malpractice by way of inserting some names in the LLTC register after signature of the Personnel Officer as well as Manager/Agent of the Colliery were obtained in the Register.

Sri Singh, in his report which has been made annexure to the chargesheet, has not spared censorious criticism of the Manager/Agent in allegedly giving free hand to T. P. Singh and the concerned workman to indulge manipulation and malpractice. Upon consideration of this part of the report of Sri Singh the management framed a charge of forgery with fraudulent and dishonesty intention against the concerned workman. In order to sustain the charge of forgery it is bounden duty of the management to specify precisely which part of the LLTC register was manipulated by the concerned workman B. N. Singh and which part by T. P. Singh. That has not been done. There is no vestige of evidence on record that the employees whose names were allegedly included in the LLTC register did not receive the amount shown against their names in the bill register. The Personnel Officer and the Manager/Agent of the Colliery could have scotched contrivance of the concerned workman and T. P. Singh, if they had any by being more alert and vigilant. As a matter of fact Sri S. R. Singh suggested that T. P. Singh and B. N. Singh should be suspended from service pending enquiry to avoid further manipulation and tampering of record and proceeding should be started against R. K. Rai, the then Sr. Personnel Officer. Sri Singh also reported that P. B. Bhowmik and M. N. Singh, Agent should be advised to be very cautious in future in dealing which such case it is not known whether the management started any proceeding against R. K. Rai. S/Shri Bhowmik and M. N. Singh cannot also avoid their responsibilities in the matter. In my view, proceeding should have been started against them. But without doing so, the management has framed the concerned workman on a charge which has not been proved at all. The concerned workman, if he did include some names in the LLTC register after obtaining the signature of Sr. Personnel Officer and the Manager/Agent of the Colliery, did not do so with a view to make wrongful gain himself or wrongful loss to the company as there is no evidence to indicate that none of the employees whose names were allegedly included afterwards, made any complaints in the bill receipt of the amount shows against their names in the bill register. In my view, the management has failed to prove this count of charge against the concerned workman.

11. The remaining charge left against the concerned workman is that he has defalcated the amount of Rs. 1280 payable to Bhola Kamar, Blacksmith who had retired from service by putting false signature. The Enquiry Officer held that the signature of Bhola Kamar at page 45 (Ext. M-11) in domestic enquiry proceedings differs from his signature as given in Ext. M-9. Secondly, Bhola Kamar in his application dated 7-2-86, stated that he had not been paid any amount of mini LLTC which he applied for in 1985. But the concerned workman submitted a photostat copy of application of Bhola Kamar without date, but the Agent of the Colliery signed it on 20-9-86. This application of Bhola Kamar is subsequent to his application dated 7-2-86. This application discloses that Bhola Kamar received the amount. Anyway, there appears to be some cause for suspicion in the matter. I think that it was best course left open for the Enquiry Officer to examine Bhola Kamar. But he did not do so. There is no evidence on record to show that Bhola Kamar subsequently lodged a claim with his former employer that the amount in question was still due. Hence, I hold that the Enquiry Officer was totally unjustified in coming to the conclusion that the concerned workman defalcated the amount payable to Bhola Kamar.

12. The other aspect of the matter is that T. P. Singh who was also chargesheeted for the same misconduct was reinstated in service in consideration appeal preferred by him with effect from 24-12-90 (Ext. W-1).

Since the management has totally failed to bring the charge home to the concerned workman, I consider that his dismissal from service was unjustified and that he should be reinstated in service with effect from his date of dismissal thereof and paid 75% of back wages from the date of his dismissal from service till he is reinstated.

13. Accordingly, the following award is rendered the action of the management in dismissing Shri B. N. Singh, Pay Clerk, from service of the Colliery is unjustified. The management is directed to reinstate him in service with effect from the date of his dismissal from service and to pay him 75% of back wages from the date of his dismissal from service i.e. 20/21-7-1987 till he is reinstated. The management is directed to reinstate him in service within one month from the date of publication of the award and the concerned workman is also directed to report for duty within the period prescribed.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 9 अप्रैल, 1992

का. भा. 1197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के धारा 17 के अनुसूचना में, केन्द्रीय सरकार सेंट्रल बैंक आफ इण्डिया के प्रबन्धन के संबंध में नियोजकों और उनके कामकाज के बीच, अनुबंध में निहित औद्योगिक विवाद में लेबर कोर्ट इनाकुलम के पंचवट का प्रकाशन करता है, जो केन्द्रीय सरकार का 8/4/92 को प्राप्त हुआ था।

[संख्या एल—12012/96/90—ई-2 (ए)]

श्री. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 9th April, 1992

S.O. 1197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court Ernakulam as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on the 8-4-92.

[No. L-12012/96/90-IR (B) II]

V. K. VENUGOPALAN, Desk Officer
ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM

(Labour Court, Ernakulam)

(Tuesday, the 31st day of March 1992)

PRESENT :

Shri R. Raveendran, B.A., B.L.,
Presiding Officer

Industrial Dispute No. 12 of 1990 (C)

BETWEEN :

The Regional Manager, Regional Office, Central Bank of India, Trivandrum-695 001.

AND

The General Secretary, Central Bank of India Staff Union, 41/1757, Paramara Shopping Centre, Ernakulam-682018.

Representation :

Smt. K. R. Indira,

Deputy Chief Officer, (Law),

Central Bank of India,

Trivandrum.

..For Management.

974 GI/92—5

AWARD

The issue "whether the action of the management of Oriental Bank of India in discharging Shri. S. Rajan from the services of the Bank is justified ? If not to what relief the workman is entitled ?" was referred to this Court for adjudication by the Government of India, Ministry of Labour, New Delhi as per Order No. L-12012/96/90-IR.B.II dated 25-7-1990. But as per corrigendum even No. dated 9-8-1990 the name 'Oriental Bank of India' appearing in the schedule substituted by 'Central Bank of India.'

II. Discharge of the employee was after a domestic enquiry into the charges framed against him. The validity of the domestic enquiry was tried by me as a preliminary issue. Facts necessary for the disposal of the case have been narrated in detail in my order dated 10-2-1992 under which the preliminary issue was disposed of. I shall here extract that order in full :—

"PRELIMINARY ORDER

"Whether the action of the management of Oriental Bank of India in discharging Shri S. Rajan from the services of the bank is justified ? If not to what relief the workman is entitled ?" is the issue referred for adjudication to this Court as per the Order No. L-12012-96/90-IR.B.II dated 25th July, 1990.

2. The workman has filed claim statement stating as follows :—

The workman was selected by the Central Bank of India Management to the post of Part time Safai Karmachari and Posted to Kumarapuram Branch as a permanent Part time employed with effect from 27-3-85. His working hours were between 8.30 and 10.30 a.m. Whenever instructed by the Manager he used to work beyond 10.30 a.m. The duty of the workman was confined to cleaning the bank's premises and counter etc. There was no occasion for him to deal with bank's books and ledgers. On 21-8-87 afternoon, the workman was summoned to the branch from his house through a special messenger. He was told there is some discrepancy in his account. And they wanted him to write a letter in his own handwriting as dictated by them. They assured that if such a letter is given, there will be no trouble for him and the discrepancy in the account can be rectified. They threatened to hand him over to the police if he disobeyed. Under such threat they obtained a letter from him admitting certain allegations connected with the internal operations of his savings bank account. They have also forcibly obtained a withdrawal slip for Rs. 70 from him under such threat as described above. They made Mr. Arulappan a junior most employee on probation with only 4 months service as a witness. It was alleged that while working as part time safai karmachari at Kumarapuram branch had defrauded the bank to the tune of Rs. 45—88 by doing certain manipulations with the HSS ledger maintained by the branch. Sri Rajan was maintaining savings account No 2719 with the branch. On 24-6-87 the credit balance in the account was Rs. 174—12. On 26-8-87, a withdrawal for Rs. 70 was presented by him in the account and the balance on that date was Rs. 104-12. Later the workman had altered the entry of withdrawal for Rs. 70 as Rs. 10 by using some sort of paste over the figure 7 and made it appear as 1. Simultaneously the balance of Rs. 104-12 was altered as 164—12. On 16-7-87 a sum of Rs. 100 was withdrawn by on 20-7-87. The balance on 20-7-87 is then overdrawn by Rajan to the extent of Rs. 45-88 which is the amount defrauded by the above manipulations. Sri. Rajan had manipulated with the teller payment register kept by the branch. On 26-6-87, there was a payment of Rs. 70 in the account on page No. 19 of the teller payment register. To avoid noticing this entry, he had pasted page 18 and 19 together. To avoid suspicion, he had pasted together some other pages also in the teller payment book. He had tampered with the bank's records for the purpose of defrauding bank's money. He had destroyed the withdrawal for Rs. 70 presented by him on 26-6-87. The findings of the enquiry officer are perverse. The disciplinary authority and appellate authority failed to weigh the evidences judiciously. In these circumstances the order of discharge from bank may be found to be illegal and

the workman may be reinstated in service with full backwages.

3. The Management has filed written statement contending as follows :—

Sri. S. Rajan was appointed by Central Bank of India Management as a part time Safai Karamchar, and was posted at Kumarapuram branch with effect from 27-3-85. Even though his working hours were fixed as 8.30 a.m. to 10.30 a.m., it is true that he used to help the Branch Manager and Accountant in carrying the books and ledgers whenever the sub-staff of the branch happened to be late, Sri S. Rajan had occasion to open the branch premises in the absence of branch manager and accountant as he had to clean the premises before commencement of the working hours of the branch. While so Sri S. Rajan by using his little knowledge about operation of the savings account defrauded the bank Rs. 45.88 doing manipulation and alterations in the various books and ledgers maintained by the branch. The management issued him a memo of charges to which he submitted an explanation. Since the explanations were not satisfactory the management ordered domestic enquiry against him. The enquiry was conducted duly observing all formalities Sri Rajan was given every opportunity to defend his case. He was given sufficient opportunity to cross examine the witness in support of the charges. The enquiry conducted against Sri Rajan was fair and legal and in accordance with the principles of natural justice. On the basis of the finding entered by the enquiry officer in a properly constituted enquiry, the workman was discharged from service. The workman is not entitled to get reinstatement in service with or without backwages.

4. The Union has filed reply statement reinstating the allegations in the claim statement and refuting the contentions in the written statement.

5. The points that arise for consideration are whether the enquiry conducted by the enquiry officer is legal and proper and whether the findings entered by the enquiry officer are perverse.

6. For the management M1 is marked.

7. Point.—The delinquent was a part-time safai karmachari in the management bank. While he was working at Kumarapuram branch with effect from 27-3-85 a charge memo was issued to him calling for his explanation why disciplinary action should not be initiated against him for the misconduct committed by him. He submitted his explanation denying the charges. Not satisfied with the explanation submitted by him. The management ordered domestic enquiry by appointing a domestic enquiry officer. The enquiry officer held the enquiry and made the report. Ext. M1 finding him guilty of all the charges. Accepting the findings of the enquiry officer the management discharged him from service. Aggrieved by the said order of discharge the union espoused the cause by raising an Industrial Dispute which culminated in this reference.

8. The workman is challenging the report and the findings on the grounds that the enquiry was conducted without following the principles of natural justice and the findings entered by the enquiry officer are perverse. The file containing the proceedings, evidence taken in the enquiry and the findings entered by the enquiry officer as marked Ext. M1 on consent of parties. A reading of Ext. M1 would go to show that the enquiry officer conducted the enquiry strictly in compliance with the principles of natural justice by affording sufficient opportunity to the delinquent of being heard. It can also be seen that the delinquent has participated in the enquiry through out. He has cross examined the witnesses of the management. It can also be seen that he was supplied with list of documents and witnesses sufficiently early. In these circumstances, I find that the enquiry officer has conducted the enquiry following the principles of natural justice and the domestic enquiry is legal and proper.

9. Concerning the findings the delinquent was charged for the misconduct of defrauding the bank to the tune of Rs. 45.88 and manipulations and tampering of registers records of the bank. The charges are as follows :—

1. Sri Rajan while working as part time safai karmachari at Kumarapuram branch had defrauded the bank to the tune of Rs. 45.88 by doing certain manipulations with the H.S.S. Ledger maintained by the branch. Sri Rajan was maintaining savings account No. 2719 with the branch. On 24-6-87 the credit balance in the account was Rs. 174.12. On 26-6-87 a withdrawal for Rs. 70 was presented by him in the account and the balance on that date was Rs. 104.12. Later Sri Rajan had altered the entry of withdrawal for Rs. 70 as Rs. 10 by using some sort of paste over the figure '7' and made it appear as '1'. Simultaneously the balance of Rs. 104.12 was altered as 164.12. On 16-7-87 a sum of Rs 100 was withdrawal for Rs. 50 on 20-7-87. The balance on 20-7-87 is then overdrawn by Rajan to the extent of Rs. 45.88 which is the amount defrauded by the above manipulations.

2. Mr. Rajan had manipulated with the teller payment of register kept by the branch. On 26-6-87 there was a payment of Rs. 70 in the account on page No. 19 of the teller payment of register. To avoid noticing this entry the member had pasted page Nos. 18 and 19 together. To avoid suspicion the member had pasted together some other pages also in the teller payment book.

3. Sri. Rajan had tampered with the Bank's records for the purpose of defrauding Bank's money. Sri Rajan had destroyed the withdrawal for Rs. 70 presented by him on 26-6-87.

For prove these charges the management has examined MW1 to MW5 and marked Exts. M1 to M11 in the enquiry. It can be seen from Exts. M8 and M9 that the delinquent has admitted that he had made alteration to the ledger. The testimony of MW3 would go to show that this letter was signed by the delinquent in his presence. Further more Ext. M-4, M-5, M-6 and M-10 would amply prove the fact that he had defrauded the bank to the tune of Rs. 45.88 by doing manipulations with the H.S.S. ledger maintained by the branch. Therefore I find that these evidences Ext. M4, M5, M6 and M10 and M8, M9 and depositions of the MW1 to MW5 would prove the first charge levelled against the delinquent. So also the Ext. M4 M7, and testimony of MW4 would prove the charge No. 2 and Ext. M-4, M-7, M-11 and testimony of MW4 would also prove the charge No. 3. In these circumstances, I find that the management has succeeded in proving the charges by adducing legal and proper evidence in the enquiry. The enquiry officer has entered the findings on the basis of the available evidence in the enquiry. Hence I find that the findings of the enquiry officer are supported by legal evidence and these findings cannot be termed as perverse.

10. In the result, a preliminary order is passed finding that the enquiry conducted by the enquiry officer is legal and proper and the findings entered by the enquiry officer are also supported by legal evidence."

III. The question remains to be considered is as to whether the punishment imposed on the delinquent is justified and proper. The delinquent was discharged from service by the management for the misconduct of defrauded the bank Rs. 45.88 doing manipulation and alterations in the various books and ledgers maintained by the branch. The learned counsel for the workman would argue that the punishment imposed on the delinquent is disproportionate to the gravity of misconduct. But the learned counsel for the management would argue that the punishment imposed on the delinquent will commensurate with the gravity of misconduct committed by the delinquent. The misconduct committed by the delinquent is that he defrauded the bank to a tune of Rs. 45.88 by manipulating and tampering registers. It can be seen that the nature of misconduct committed by the delinquent is very serious, so that he deserves the punishment of discharge which cannot be said to be unjustified and improper. Therefore I find that there is no reason to invoke section 11-A of the I. D. Act, in the matter of punishment imposed on the delinquent by the management.

IV. In the result, an award is passed confirming the discharging of Sri. S. Rajan from service of the bank.
Ernakulam.
31-3-1992.

R. RAVEENDRAN, Presiding Officer
APPENDIX

Exhibit marked on the side of Management :

Ext. M1.—File containing proceedings and report on the Domestic Enquiry held against the Workman.

नई दिल्ली, 9 अप्रैल, 1992

का. अ. 1198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूनाइटेड बैंक ऑफ इण्डिया के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवाद में निदिष्ट औद्योगिक विवाद के केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 8-4-92 को प्राप्त हुआ था।

[संख्या एल.—12012/525/87-डी-2 (ए)]

वी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 9th Apr'l, 1992

S.O. 1198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of United Bank of India and their workmen, which was received by the Central Government on the 8-4-1992.

[No. L-12012/525/87-D.II(A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 24 of 1989

PARTIES:

Employers in relation to the management of United Bank of India

AND

Their workmen.

PRESENT:

Mr. Justice Manash Nath Roy, Presiding Officer.

APPEARANCES:

On behalf of Management—Mr. Anil Kumar, Law Officer of the Bank.

On behalf of Workmen—Mr. Dipak Sarangi, Joint Secretary of the Union with Mr. Sujit Mohan Rakshit, Treasurer of the Union.

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

On the basis of the pleadings, submissions and evidence, I think that the Order of Reference, which is to the following effect:

"Whether the action of the management of United Bank of India, Calcutta in transferring Shri Alo Sengupta, Machine Operator, from Deshapriya Park Branch, Calcutta to Old Court House Street Branch Calcutta contrary to the management's Rotational Transfer Policy is justified? If not, to what relief is the workman entitled?"

should be set out in full particulars.

2. The workman Alo Sengupta (hereinafter referred to as the said employee), at the time material to this reference, was working in Old Court House Street Branch of the United Bank of India (hereinafter referred to as the said Bank) and before such posting, he was a staff of Deshapriya Park Branch of the said Bank, since 1968. It was his case that on or about July 6, 1983, he was posted at Deshapriya Park Branch as machine operator and thereafter, on November 14, 1986, he was transferred from that Branch to the Old Court House Street Branch of the said Bank, as such machine operator.

3. Against such transfer, on or about February 16, 1987, the said employee has stated to have made a petition before the Regional Manager, Calcutta South Region of the said Bank, asking him to modify his transfer order as mentioned earlier, in accordance with the Circular of the said Bank dated October 30, 1985 and also one dated February 10, 1987. He has alleged that he gave reminder to the said Regional Manager and then on February 24, 1987, his Association made an application before the Assistant Labour Commissioner (C), for his intervention and for the grant of necessary reliefs.

4. According to him, on February 25, 1987, the said Assistant Labour Commissioner issued Notices of conciliation in terms of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) and it has been alleged that during the pendency of such conciliation proceedings, there were negotiations with the aforesaid Regional Manager and the Association of the said employee, on the basis of the circular dated February 10, 1987 and even before conclusion of conciliation proceedings, the said Bank released the said employee from his posting at Deshapriya Park Branch and posted him at Old Court House Street Branch. It has been alleged that such orders of transfer and posting were improper, since at the time, the transfer order was served on the said employee, he was enjoying sanctioned leave.

5. The said employee has stated that the most point of this dispute lies in the interpretation and consideration of the two circulars of the said Bank dated October 30, 1985 and February 10, 1987. In fact, this was also one of the submissions made by the said Bank.

6. Paragraph 1 of the Circular dated October 30, 1985 indicates that "the Award staff, when stay at one office for five years or more, will come under the purview of the Scheme of Rotational Transfer". It has also been pointed out in paragraph three of the Circular, "it was stipulated, in transferring an Award staff out of a Branch/Office, the principle of 'First in first out' will be followed" and paragraph 7 of that Circular states that "the employees in receipt of Special Allowances, will be listed on the basis of the type of special allowance being paid and thereafter, under the scheme, will be categorised appropriately."

7. The said employee has further pointed out that paragraph three of the other Circular dated February 10, 1987 postulates "in order to avoid confusion with regard to understanding of the above clause, it is clarified that paragraph three of the circular dated October 30, 1985, should be read with paragraph seven of that circular, wherein it has been stated that the employees in receipt of special allowance, be paid and transferred under the scheme, will be effected categorically i.e. amongst the employees receiving the same type of special allowance, in other words while transferring in a particular Branch/Office, as per the provisions of the said circular, the criteria of "first in first out" will not rest merely on the seniority of the incumbent, but shall be on the basis of seniority in the category, he is working".

8. It was the further allegation of the said employee that the said Bank have not only not replied to his petition, but has also given effect to the order of transfer, ignoring and violating the provisions of the said Act.

9. There is no dispute that the said employee had joined the Deshapriya Park Branch of the said Bank as machine operator in July 1983 and as such, he has claimed that as machine operator at the relevant time in May 1987 or on November 14, 1986, when the order of transfer was issued, he had not completed five years, as machine operator at the said Deshapriya Park Branch of the said Bank and

thus there was violation by the said Bank, of their circular dated February 10, 1987 and such action was also claimed to be maintainable and motivated, apart from being without any basis and reason.

10. It was the case of the said Bank that the substantial and necessary point in issue in this case is, whether the said employee has been transferred from Deshapriya Park Branch of the said Bank to the Old Court House Street Branch, before completion of five years as machine operator, was against or contrary to the policy of transfer of Award staff of the said Bank, as laid down in the circular dated October 30, 1985, which was clarified on February 10, 1987.

11. It was submitted by the said Bank, that from a reading of the preamble of the concerned order of Reference, it would appear that appropriate authorities, while making such reference, have really prejudged the issue involved, as they have recorded that the transfer was contrary to the said Bank's policy and as such, the order of Reference was not only bad in law, but the same was arbitrary and was made in a mechanical way, without applying the mind duly and thus, there cannot be any adjudication proceedings over the alleged dispute.

12. It was the further submission of the said Bank, while supporting the above mentioned preliminary point, that the *sine-qua-non* for a legal or valid order of Reference, being the existence of Industrial Dispute as a matter of fact, so there could not be any Reference made, unless the facts and circumstances of a given case made it clear that there exists some definite dispute and that also, of some substance and those tests, not having been appropriately satisfied in this case, there was no apprehension or either the existence or otherwise of a dispute. It has also been indicated that even otherwise, the said employee, having admittedly worked at the transferred Branch for the last three years, the Reference should be held to be not maintainable, as belated.

13. In fact, the said Bank has also indicated that the employee was transferred from Deshapriya Park Branch to the Old Court House Street Branch and that, both the branches are at Calcutta. Such order of transfer has also been claimed to be a managerial function of the said Bank and the transfer order in the instant case, was further claimed to have been issued in due exercise of such managerial power of transfer and for administrative exigencies, without violating any of the relevant provisions of the Sastri Award and the circulars of the said Bank as involved. It has also been indicated and that too duly, transfer is an incident of service, not only in all services, but also in the Banking industry. It has further been pointed out that it is the prerogative of the management to make such order of transfer in the interest of administration and therefore, when such power has been exercised, there cannot be any Industrial Dispute, on the question of such transfer, which again was made in the interest of administration. It was further pointed out that the Bank's circulars being in the nature of guideline to the concerned authorities, for helping them to take appropriate and expeditious decision, cannot confer any legal right on the Award staff, (which the said employee is), and even if there is such or any breach of the guidelines, as produced, there cannot be any dispute and such being the position, no proceeding or adjudication can take place in the facts of this case.

14. It was agreed by the said Bank that the service conditions of the workmen staff of the said Bank are, *inter-alia*, governed by the terms of employment as embodied in the letter of appointment, as well as by the provisions of different award viz. Sastri Award, Desai Award, as modified by the Industry-wise Bipartite Settlement dated October 19, 1966, as amended from time to time and under or in terms of the said settlement, certain categories of clerical workmen staff, have been provided with special allowances for holding such posts as in this case, within the broad category of workmen, which includes duties requiring higher responsibilities, in addition to the routine duties of the clerical cadre and paragraph 5.2 of the Bipartite Settlement of 1966, enumerates certain posts, requiring the discharge of duties and responsibilities as attached thereto and as listed in paragraph 1(B) of the said settlement. It was also pointed out that machine operator, is one amongst such posts within the broad category of the clerical award staff and the said

employee, according to the said Bank, was and still is a constituent of clerical staff employee of the said Bank. It was further agreed that the said employee joined the Deshapriya Park Branch on October 4, 1967 and while working as such, he was offered the post of machine operator, which is the post within the broad category of clerical award staff as mentioned in the Bank's letter dated July 6, 1983, pursuant to which, the said employee started performing functions of machine operator and such being the position, it has been submitted that the said employee, continued to work as clerical staff in the concerned branch since 1967.

15. The said Bank has denied the representation as said to have been made by the said employee, for having his order of transfer modified, but has stated that subsequently, a representation was made by him, with a prayer to review the order of transfer. It has also been stated that the said Bank's circular dated February 10, 1987, having been issued after the order of transfer of the said employee dated November 14, 1986, has no application in this case. It has further been stated that the said Bank, while effecting the transfer, has not violated any of the provisions of the said Act and the order in question, had to be given effect to, since the same was pending for a long time. It has been repeated that transfer, is not only a condition of service, but to give effect to the same, is also the managerial function. While on the point, paragraph 536 of the Sastri Award, which according to the said Bank was applicable in the matter of transfer was referred to. It should be noted that the said paragraph stipulates that transfer should not be made normally more than once in a year and that, transfer outside the State or the language zone, in which the employee concerned is serving, should not be made without the consent of the employee. Since in the instant case, the said employee was transferred from one branch to another branch of the said Bank within the city of Calcutta and without involving change of the State or language zone and without any loss of pay or emoluments, it was submitted that there was no violation of the provisions of the Sastri Award and as such also, there was no case or any cause to raise the pretended Industrial Dispute, in this proceedings. The said Bank has also stated that the said employee's order of transfer, was also in conformity with the circulars, even though the said Bank has mentioned and still maintains that the transfer of the said employee was effected in the interest of administration and that being the position, it has been claimed that the circulars as mentioned earlier, were not applicable in terms of paragraph nine of the said Bank's circular dated October 10, 1985. It was the further case of the Bank, that on due consideration or construction of the two circulars of 1985 and 1987, it will be patent that there has been no case or cause made out by the said employee, not only for adjudication, but also for any interference by this Tribunal.

16. It was also the case of the said Bank that the said employee never joined the Deshapriya Park Branch in July 1983, but he was working there since 1967 and during such workings, he was made a machine operator in July 1983 and as such, the terms of paragraph one of the said Bank's circular of October 1985 viz. Award staff will stay at one branch for five years or more, would not be operative and applicable in terms of the scheme of rotational transfer.

17. It was the specific case of the said Bank that in terms of paragraph 1 of the Circular dated October 10, 1985, an Award Staff with a stay at one branch for 5 years or more, would come under the purview of the concerned scheme of rotational transfer, whereas paragraphs 3 and 7 relate to the mode and method of determining the seniority of such staff, amongst the special category holders, against whom the transfer which will be affected for the purpose of identifying workers, who are eligible to be so transferred and that too on the principle of "First in first out". It has also stated that the clarificatory circular as mentioned earlier, deals only with paragraphs 3 and 7 of the Circular dated October 10, 1985 and has not altered or clarified in any way, the contents of paragraph 1 of the circular. It has also been stated by the said Bank that criteria of 5 years stay in the Branch as indicated in the circular of October 10, 1985, contemplates the total period of stay of the Award Staff in a Branch/Office, irrespective of the fact of making the concerned Award staff, a permanent holder of some special

allowances, carrying with the post, during the course of his stay at the concerned branch and it has also been stated that at the time of the issuance of the order of transfer, the said employee had already completed about 19 years at Deshapriya Park Branch, as Award Staff and staywise also, he was the second seniormost employee at that Branch amongst all the machine operators, when his order of transfer was issued and given effect to.

18. The said Bank has further stated that at the relevant time, there were 6 machine operators posted at Deshapriya Park Branch including the said employee, and all of them were directed to be transferred by Orders bearing Nos. 31/86 to 36/86, all dated November 14, 1986, and there were no exceptions made. The said Bank has further stated that pursuant to such order of transfer, excepting the said employee, all other were released from Deshapriya Park Branch on or before April 11, 1987. The order of transfer of the said employee was given effect to on May 26, 1986. In the facts of this case, it was the submission of the said Bank that they have fully complied with the provisions of Sastri Award, as well as the Circular, in transferring the said employee and there had or has been no violation, as complained.

19. The said Bank has particularly denied that the action as taken in the instant case was either malafide or had in law and devoid of any logic or was intended to victimise and said employee for ulterior motive as alleged. These allegations were claimed to be bald and bare and without any basis or substance. The said Bank has further claimed that the action as taken, was fully in accordance with the relevant provisions of Sastri Award, as well as their own circular, as indicated, and in implementing the order of transfer of the said employee, none of his service conditions have been violated or altered. It has been stated that the said employee has been receiving continuously, machine operator's allowance, which he was getting after his transfer and since the transfer in the instant case was initiated duly and given effect to in the exigencies of administrative necessity and in good faith and there was no intention to victimise, so this Tribunal should not come in aid of the said employee and thus, disturb such administrative act, as has taken place and is continuing for a long time, as that would create further administrative difficulties.

20. The said employee deposed as WW-1 and he has agreed to have entered in the service of the said Bank on January 12, 1967. He further agreed that at present, he is working as machine operator at the Old Court House Street Branch and previous to that, he was at the Deshapriya Park Branch of the said Bank in the same post. It was his case that initially, he was posted at the relieving department at Head Office and then, in October 1968, he was posted at Deshapriya Park Branch as Cash Collector. He has of course stated that for such transfer, his consent was not taken and claimed, that action to be against the policy of the said Bank and thereafter, he was made a General Clerk. On his own case, he has stated that because of his seniority, he became a machine operator and in support of that, he produced his appointment letter Ext. W-1.

21. It was his case that on the basis of the circular as mentioned, there was a notice of transfer and he was transferred in the Old Court House Street Branch. The two circulars as mentioned earlier, have been marked said Ext. W-2 and W-3. It was the further case of the said employee that for his transfer from Deshapriya Park Branch to Old Court House Street Branch, an order of transfer was given to him being Ext. W-4 and on the basis of the second circular being Ext. W-3, he made a representation in the said Bank through Ext. W-5, as he thought, his order of transfer was contrary to the concerned circular and has stated that since there was no reply to Ext. W-5, he gave a reminder being Ext. W-6 and has further claimed that even after such reminder he has not received any reply from the said Bank and then, the present dispute was raised. It was also his case that in 1987, he applied for leave, which was granted by Ext. W-7 and such leave was from 18th May to 19th June 1987. He has further alleged that before joining at the Old Court House Street Branch, he was not formally released by the Bank to the other branch, since he was on leave, but he admitted that by Ext. W-8, which was received, he, through registered post,

agitated against such order of transfer, his specific claim was that, he was transferred while he was on leave and that was an improper act or action by the said Bank. The said employee was not a member of the Executive Committee of the Union viz. United Bank Employees Association, which is affiliated to All India Bank's Association, but he was really a member of the State Committee. He was not a member of the Central Committee, which is a registered Committee and the State Committee was not registered. He had to agree that when he received the order of transfer, there were 7 other persons working as machine operators at the Deshapriya Park Branch and by the orders as mentioned earlier, all of them were transferred together and such transferred from Deshapriya Park Branch to Old Court House Street Branch, were not a transfer out of Calcutta, since both the branches are at Calcutta. He could not deny that even on such transfer, he remained a machine operator and on a question by the Tribunal, he stated that really he was not opposing transfer, but was opposing the circular and the language of the order of reference showed, that the employees on principle were and are not against transfers, but they were against the Circular. This witness could not deny that he was at the Deshapriya Park Branch from October 1967 to May 1987 i.e. for about 20 years and he claimed, for these years, he remained a member of the Award staff and he further agreed, that the transfer order in this case was earlier than the circulars Exts. W-3 and W-4. He further agreed that by the concerned order of transfer, he has not suffered any loss of pay and such order of transfer, was issued in ordinary course of business, apart from agreeing, that in the Banking Industry, transfer is an incident of service and by issuing the transfer order, the said Bank has not been breached any of his terms of service.

22. MW-1 Ujjal Prakash Sarkar, Deputy Manager, United Bank of India, who, on the date of deposition, was at Deshapriya Park Branch, produced a Circular dated October 10, 1985 (Ext. W-2) and indicated that thereby, the particulars of all the machine operators posted at his Branch asked for and necessary documents were supplied from this Branch, to the General Manager (P) of the said Bank. Undoubtedly, he was at that branch from November 2, 1988. He candidly stated that he was not there when the said employee was transferred. It was his evidence that in the Bank, the Award staff are divided into two categories viz. clerical and sub-staff. It was his evidence that cash clerks being to clerical staff and they work in cash department, while general clerks are employed in the general department. He deposed that machine operators perform the duties in the general department, where, there are machines and in all branches of the Bank, machines are not available. He admitted that at the Deshapriya Park Branch, at the time relevant to this proceeding, there were NCR machines and he could not answer the suggestions, if on the date of his deposition, the said employee and other employees were working on ESCOTA machines or they were transferred for making room for the operators, knowing operation of NCR machines.

23. MW-2 Suresh Chandra Bhowmick, was the Deputy Regional Manager, Midnapore South Region at Tamuk and he stated that in 1986-87, he was the Deputy Regional Manager at Calcutta South Region Office and was looking after all the administrative matters including transfer and posting of the employees. He stated that the Office Order, Ext. W-4 was issued from his office and by that, the said employee was transferred. He stated that such transfer was given effect to, in the interest of the Bank and also under rotational transfer policy. Apart from that, he has also stated that those employees, who completed 5 years of service in a branch, would come under such transfer policy, which has been marked as Ext. W-2. It was his evidence that the said employee, along with 7 other Machine Operators, were transferred from the Deshapriya Park Branch and he produced the release orders, which were collectively marked Ext. M-3 and deposed that the said employees were released on May 16, 1987. Thus, on his evidence, all other persons were released earlier than the said employee. It was his specific evidence that by the concerned transfer orders, none of the service conditions of the 7 employees or of the said employee, were violated and the transfer policy of the Award Staff in this case, in the line as mentioned in the Sastri Award. The transfer policy was produced as Ext.

M-4 and the witness deposed that transfer of the said employee, was made in the usual course and while effecting such order of transfer, his tenure, including his seniority at Deshapriya Park Branch, was considered and to establish that, he made a reference to Ext. M-2. To substantiate the case, further reference was made to paragraph 536 of Sastri Awarded Ext. M-4. On the basis of cross-examination of this witness, I feel nothing could be found out, wherefrom it can be decided that the statements as made by him, were not tenable.

24. The appointment letter of the said employee was dated July 6, 1983 (Ext. M-1) and by Ext. W-4 i.e. the order dated November 14, 1986, he was transferred from Deshapriya Park Branch to Old Court House Street Branch of the said Bank, which is also at Calcutta and not outside the language zone and the policy of the said Bank Ext. M-2, was issued on October 10, 1985. There was no dispute about the above dates and facts, there was also to dispute that the said employee was an Award staff and as such, in view of the contents of Ext. M-2, he will come under the purview of the Scheme of Rotational transfer, and the said Ext. W-2, also lays down that in transferring an Award staff out of a Branch/Office, the principle of "First in First out" will be followed viz, the Award staff staying in a Branch/Office for a longer period, will be required to move first, unless his case has been reviewed as per the provisions of paragraph 5 of that exhibit, which has postulated certain exceptions. There was admittedly, some clarifications evolved in the Scheme Ext. W-2 by Ext. W-3, which was dated February 10, 1987 i.e. after the transfer of the said employee. This exhibit was brought into picture, as it was found that some confusion arose with regard to the terms, scope, arranging, application and interpretation of paragraph-3 of Ext. W-2 and to obviate them, the clarifications as indicated in paragraphs-3 and 4 of Ext. M-3, as quoted hereunder :—

"3. In order to avoid confusion with regard to understanding of the above clause, it is clarified that paragraph 3 of our Circular dated 30-10-85 should be read with paragraph-7 of the said Circular wherein it has been stated that the employees in receipt of Special Allowance will be listed on the basis of type of Special Allowance being paid and transfer under the Scheme will be effected categorywise i.e. amongst the employees receiving the same type of Special Allowance. In other words, while transferring out an employee having a longer period of stay in a particular Branch/Office, as per provision of said Circular, the criteria of 'First In First Out' will not rest merely on the seniority of an incumbent but shall be on the basis of the seniority in the category he is working.

4. It is, therefore, desired that while effecting transfer of such workmen-staff having a longer period of stay in a particular Branch/Office of the Bank as enumerated in Circular dated 30-10-85, care should be taken to effect such transfer by taking into account paragraph-3 and 7 of the said Circular. For example, a Special Assistant is to be transferred against the post of a Special Assistant, a Machine Operator is to be transferred against the post of a Machine Operator, a Cash Clerk is to be transferred against the post of Cash Clerk and likewise and their seniority should be determined by virtue of their working in such positions." were added/indicated. It should also be indicated here that Mr. Sarangi, appearing for the said employee, firstly stated that his Union was not against the Rotational transfer Policy, but they were opposed to any action taken contrary to the said Policy and here in this case, he contended that the said Bank really acted contrary to such policy.

25. Against his order of transfer Ext. W-4, the said employee made a representation Ext. W-5, on February 16, 1987, stating inter alia amongst others, that since he had not completed 5 years of service as Machine Operator in Deshapriya Park Branch so his case should be reviewed in terms of Ext. W-3. It would appear that on April 11, 1987, by Ext. W-8, the said employee was released from his posting at Deshapriya Park Branch, and that too when admittedly, he was on Privilege Leave, as would appear from Ext. W-7.

26. The fact that the said employee was an Award staff, was not only admitted very fairly by Mr. Sarangi, but that will also appear from the evidence of the said employee WW-1 himself and as such, Mr. Kumar, appearing for the

said Bank submitted that his case would be bound by Ext. W-2 and Ext. W-3 was not applicable in his case, as the same was not retrospective but prospective from February 10, 1987 i.e. the date of Ext. W-3, more particularly when, the same became operative after the order of transfer of the said employee, was effected by Ext. W-4. It was rightly pointed out by Mr. Kumar that the exceptions in paragraph 5 of Ext. W-2, were not applicable in this case.

27. After dealing with the policy of the said Bank regarding transfer, Mr. Kumar, referred to paragraph 536 of the Sastri Award, dealing with general transfer policy. The said paragraph, as submitted by Mr. Kumar has two parts. The first part, really deals with transfer criterion for subordinate staff and the second part, applies in the case of employees of the category of the said employee. Paragraph 535 of the said Sastri Award deals with the reasons, for which the transfer policy as indicated above, was formulated and Mr. Kumar indicated that on the basis of such transfer policy, the settlement dated September 8, 1983 as in Ext. W-4 was arrived at with the workmen, represented by All India Banks' Employees' Association and the National Confederation of the Bank Employees. Thus, it was submitted by Mr. Kumar that the said settlement was operative and entered only with the Central Union and on facts, it was also submitted by him that as the said employee was a member of the State Committee, which fact would also appear from his evidence, he was not entitled to any protection as claimed. As such, it was further submitted by him that the representations of the said employee by Exts. W-5 and W-6 were made only as workman and not as office bearer. It was further indicated by Mr. Kumar that by Ext. M-1, the pretended dispute was sought to be raised on February 24, 1987 and that fact will also appear from the evidence of the said employee. It was also contended by him that by Ext. W-3 viz. the clarification, only the identity was sought to be indicated and fixed. In short, it was the overall submission of Mr. Kumar that in view of his character of and employment, the said employee was not entitled to the protections as claimed and the action, in transferring him to the Head Office of the said Bank from Deshapriya Park Branch, was not effected with any intention or ill motive, as alleged. He further claimed that the action in the instant case was taken duly, legally, properly and in bonafide use and exercise of administrative functions of the said Bank and that too, for administrative interest. It was also claimed that even on transfer as Machine Operator, the said employee continued to be a member of the Award staff and by his transfer to the post of Machine Operator, he was not given any new appointment and as such, the 5 years limitation as indicated earlier, will not help him and such limitation, should start and must be counted on his appointment as an Award staff at the Deshapriya Park Branch of the said Bank.

28. The above submissions were of course denied and disputed by Mr. Sarangi, appearing for the said employee and he claimed that the said employee, on being appointed as Machine Operator, should be deemed to be a new appointee in that post and as such, limitation of 5 years as indicated earlier, should start running from the date of his appointment to the new post and if that is so, then the transfer of the said employee to the Old Court House Street Branch from Deshapriya Park Branch of the said Bank, even though such transfer was not outside Calcutta or outside the language zone, cannot be given effect to. It was further contended by Mr. Sarangi that many disputes of the present nature arose and as such, the clarification as mentioned through Ext. W-3 had to be brought in, for the purpose of checking the misuse of power by the said Bank. In fact, Mr. Sarangi contended that the dispute in the instant case was raised as the said Bank violated the Policy as in Ext. W-2, as modified and clarified by Ext. W-3.

29. It was further claimed by Mr. Sarangi that admittedly the said employee was transferred while he was on privilege leave, so, the action as taken was not only bad or void, but the same was inflicted in violation of principle of natural justice or principle as evolved or involved in the case of the present nature. Mr. Sarangi of course admitted that paragraph 536 as indicated earlier, permits such transfer as in this, but that should be subject to the policies as indicated in Exts. W-2 and W-3. He claimed that such Policy through the exhibits as mentioned, were duly framed, but in giving effect to transfer in this case, they were violated and as such, the action as taken, should be deemed to be

mala fide and a case of victimisation. These allegations were of course categorically denied by Mr. Kumar he duly pointed out that in this case, there has been no evidence available of such mala fide use of power or any victimisation.

30. After hearing the learned representatives and considering documents along with the pleadings, it appeared to me that any allegations of mala fide use of power or victimisation have not been established and in view of what has been recorded earlier, it cannot be said that the said employee could claim the benefits of 5 years limitation in a post in this case. Since he was admittedly an Award Staff, his first appointment in the Deshapriya Park Branch of the said Bank, should be considered to be the starting point of employment and for that, the said 5 years limitation, should be deemed to start running, not from his subsequent date of appointment as Machine Operator as in either of the posts, the said employee continued to be an Award staff.

31. I also feel that if the submissions as put forward by Mr. Sarangi on Ext. W-7 are taken into consideration in the present case of transfer, then that would result to an impossible situation and in that case, no employee could be transferred, when he is on such leave. Certainly, such construction as sought to be put forward by Mr. Sarangi, would not be a harmonious one and may lead greater difficulties and impossible situations, which in my view should be tried to be avoided.

32. Apart from above, it should be noted that not only the said employee while deposing, but also Mr. Sarangi while arguing, fairly conceded that the said employee has not suffered any financial loss or any prejudice and the case was really being fought on principles and on the question of interpretation of Exts. W-2 and W-3. When that was admittedly the case, I feel that no interference in this proceeding is necessary and in that view of the matter, the order of Reference, which has not directly or otherwise, spoken of the interpretation of these exhibits, the same cannot be sustained and as such, the same cannot also be answered in favour of the said employee, the more so when, the said employee himself admitted that he has neither suffered any prejudice nor any financial loss or any seniority. At this stage, it must be kept on record that during his submissions, Mr. Sarangi pointed out that during the pendency of this proceeding, the said employee has again received a further benefit of position in the ALP machine at the Old Court House Street Branch of the said Bank and he has accepted such benefit and is working in that post. Before leaving the matter, it must also be pointed out that on March 9, 1992, Mr. Kumar produced a xerox copy of a Division Bench Judgment dated December 19, 1991 in F.M.A.T. No. 1907 of 1989, in the case of UCO Bank and others Vs. Susanta Mukherjee and others, in support of his contentions, with copy to Mr. Sarangi. But no further submission was made and that determination. But that determination will show that transfer itself being an incident of service, the transfer Policy, which is a general guide to such transfer, is nothing more than the ordinary track, on which the incident of transfer moves and even if the movement is side tracked that would not itself call for judicial interference, unless any of the prohibited side tracking elements like mala fide or arbitrariness is clearly established. The above observations, in my view can easily be applied in the instant case, as it appeared to me that neither mala fide nor arbitrariness or victimisation has been established, on the basis of the evidence record. The above determination also indicates that it is for the Bank in its All India Administration to determine, whether officers from one state will go to another state or not, which in my view also establishes that transfer more particularly when, the same is made for administrative exigencies, will be a managerial function.

33. In view of the above, I think the Reference should be rejected, which I hereby do.

34. This is my Award.
Dated, Calcutta,
The 12th March, 1992.

MANASH NATH ROY, Presiding Officer.

मई दिनांक, 10 अप्रैल, 1992

का. प्र. 1199.—आयोगिक विवाद अधिनियम, 1947 (1947 का 14) के प्रा. 17 के अनुसूचि में, कोयला सफाई मजदूरों के कर्मचारी के, को ईस्ट कटरास कोयला, के प्रबंधन के संबंध में निर्धारित और उनके कर्मचारियों के बीच, अनुसूचि में निर्धारित औद्योगिक विवाद में केन्द्रित सफाई औद्योगिक अधिनियम, (सं. 2), प्रस्ताव के पंचवट की प्रकृति का है, जो केन्द्रित सफाई का 7-4-1992 को प्राप्त हुआ था।

[संख्या एन-20012/(50)/86-डी-III(A)]

का. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 10th April, 1992

S.O. 1199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of East Katras Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 7-4-1992.

[No. L-20012(50)86-D. III(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 244 OF 1986

PARTIES :

Employers in relation to the management of East Katras Colliery of Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen : Shri S. Bose, Secretary, R.C.M.S. Union.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 31st March, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(50)86-D.III(A), dated the 4th July, 1986.

SCHEDULE

"Whether the action of the management of East Katras Colliery of Bharat Coking Coal Limited in dismissing from service their workman, Shri Devi Rai, Loader from 15-4-1985 was justified? If not to what relief is the said workman entitled?"

2. In this case both the parties made their appearance through their authorised representative. Thereafter

several adjournments were granted to the parties for filling W.S. But subsequently both the parties appeared and filed a petition under their signature praying to pass a 'No dispute' Award as the dispute has been settled between the parties. I heard both the parties and in view of their submissions, I am inclined to hold that there is no dispute existing between the parties. Accordingly I pass a 'No dispute' Award.

B. RAM, Presiding Officer

नई दिल्ली, 10 अप्रैल, 1992

का. अ. 1200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैजिस्ट्रेट आयरन एंड स्टील कंपनी लिमिटेड की दिग्वादिह कोलिरी के प्रबन्धकों से संबद्ध निरोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अद्वितीय (सं. 2), धनबाद के पंचाट की प्रकाशित करने के, में केन्द्रीय सरकार की 8-1992 को प्राप्त हुआ था।

[कडन संख्या एन-24012(40)/85-डी 4 (बी)]

श्री. क. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 10th April, 1992

S.O. 1200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Digwadih Colliery of M/s. Tata Iron & Steel Ltd. and their workmen, which was received by the Central Government on 8-4-1992.

[No. L-24012(40)/85-D.IV(B)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.
PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO 147 OF 1985

PARTIES :

Employers in relation to the management of Digwadih Colliery of M/s. Tata Iron & Steel Co. Ltd.

AND

Their workmen.

APPEARANCES :

On behalf of the employers : Shri B. Joshi, Advocate.

On behalf of the workmen : Shri B.N. Sharma, Joint General Secretary, Janta Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 31st March, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(40)/85-D.IV(B), dated the 24th October, 1985.

SCHEDULE

"Whether the action of the Management in suspending Shri Garib Pasi, Scrapper Screw of Digiwadih Colliery of M/s. Tata Iron & Steel Co. Ltd., P.O. Jamadoba, Distt. Dhanbad for 10 days from 19-7-84 is justified? If not, to what relief the workman concerned is entitled?"

2. In this case both the parties appeared but did not file their respective W.S. thereafter several adjournments were granted to the parties. Subsequently on the date fixed for filling W.S. Shri B. N. Sharma, Joint General Secretary, representing the workmen submitted a petition for passing a 'No dispute' Award as the concerned workman is not taking any interest. I heard both the parties and since the concerned workman is not taking any interest, I am constrained to pass 'No dispute' Award.

B RAM, Presiding Officer